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ABSTRACT

This guide is designed to introduce high school teachers of American history to the most recent scholarship dealing with the origins of the U.S. Constitution. Surveys of recent scholarship on constitutional origins are organized by the following topics: historiography of the Convention, the Anti-federalists, The Federalist Papers, ratification of the Constitution, and the Bill of Rights. The guide also includes three sample lesson plans: the debate for ratification of the U.S. Constitution in the State of New York; Factions and parties in American politics; and Case study: the election of 1800. A number of bibliographies on a variety of topics about constitutional scholarship also are included. Finally, the guide contains two articles: "The E Pluribus Unum Simulation" (James B. M. Schick); and "What Every Student Should Know about the Bill of Rights" (Mark P. Petracca). (DB)

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A Guide for Teachers of American History

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RECENT SCHOLARSHIP ON

THE ORIGINS OF THE U.S. CONSTITUTION:

A Guide for Teachers of American History

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"What Every Student Should Know About the Bill of Rights," by Mark P. Petracca is from The Political Science Teacher (Spring 1990). Permission to reproduce it has been granted by the American Political Science Association.

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I. INTRODUCTION

In July 1989, Hofstra University conducted a Summer Institute on "The Origins and Early Evolution of the United States Constitution." Funded by a generous grant from the National Endowment for the Humanities, this Institute was intended to help a group of specially-selected high school social studies teachers achieve a deeper understanding of the political and philosophical context within which the U.S. Constitution developed, the structure of the Constitution itself, and some of its early impact.

The New York State Board of Regents had, a few years earlier, mandated--beginning with the 1988-1989 school year--that the 11th grade U.S. History course was to deal with "constitutional and legal issues...in depth," and that the 12th grade Participation in Government course was to emphasize citizen-government interaction "through a better understanding of the U.S. Constitution, its application, and the students' participation in the democratic process."

Hofstra's Summer Institute was therefore designed to help teachers comply with this mandate by introducing them to the most recent scholarship dealing with the origins of the U.S. Constitution, and with the first decade of the government it established. There had been important changes in perspective regarding the origins of the Constitution over the past quarter-century, and it was the goal of the Institute to bring these to the attention of teachers of American history. In addition, the Institute was designed to help these teachers develop concrete, individually-shaped curricular applications that would help them to bring elements of this newer scholarship to their students.

Thus, the material included herein is presented as a way of highlighting some of the current scholarship on issues surrounding the origins of the United States Constitution. The study of constitutional origins obviously did not end with Charles Beard and his critics; novel perspectives appear with virtually every new issue of the leading scholarly journals in the field. Unfortunately, much of this scholarship remains buried in scholarly journals, with only a relative handful of academic specialists aware of its contents. Many secondary school teachers--burdened with heavy teaching loads and various other obligations and commitments--have had little opportunity to keep up with this burgeoning literature.

What this guide seeks to do, therefore, is to provide some new insights into the origins of the Constitution, rather than simply rehasing old, familiar material. Obviously, it would take a considerably longer work than this to give appropriate attention to all that has lately been done in the field; this brief review makes no pretense to undertake so courageous a task. It merely summarizes some important new ideas, together with reading lists/bibliographies that can help to guide the interested towards some new problems in the study of the U.S. Constitution. At that, the summaries deal with only some of the issues examined during the full month of the summer institute.

The material provided in this manual should help to introduce high school social studies teachers to some of the debates and issues that currently animate the field of constitutional studies. Moreover, because these new perspectives often raise provocative questions about American government today, and what our nation has become, these are not dead issues from the past. Therefore, although not all of this material is necessarily suitable for immediate introduction into the high school curriculum, it has been set forth here on the premise that it is always better for teachers to know more rather than less. The more teachers know, the better and more confidently they can teach.

Finally, in conclusion, I would like to thank all of those who made the 1989 Summer Institute such a pleasant and memorable experience. Obviously, the participants in the institute--the twenty-one New York State social studies teachers who listened so intently to my lectures, asked such excellent questions, and taught me so much--must come first on my list. In addition, I owe my colleagues Herb Rosenbaum, Mike D'Innocenzo, Barbara McAdorey, and John Rawlinson a great deal of appreciation for their various labors on behalf of the Institute. I would also like to thank Andrew Grant, Hofstra's Director of Grants Development, who more than anyone else smoothed the path for the operation of the Institute, and thereby saved my sanity on several occasions. Finally, I would like to express my appreciation to Ralph Canevali and Richard Hood, of the National Endowment for the Humanities, for their gracious help virtually every step of the way.

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IV. NEH SUMMER INSTITUTE SYLLABUS

NEH SUMMER 1989 INSTITUTE

THE ORIGINS AND EARLY EVOLUTION OF THE U.S. CONSTITUTION

LECTURE TOPICS

Day 1. Foundations of American Political Thought

2. Classical Antecedents

3. English Constitutionalism

4. American Republicanism

5. The Revolutionary Experience

6. The Articles of Confederation

7. The Argument Over a Stronger Government

8. Creating the Constitution at Philadelphia

9. The Historical Context of the Convention

10. "The Delicate Balance": The Document

11. Further Study of the Original Constitution

12. The Ratification Struggle

13. The Federalist Papers

14. The Bill of Rights

15. Unresolved Questions in 1789

16. The Evolution of the Presidency to 1801

17. The Evolution of Congress to 1801

18. The Evolution of the Federal Courts to 1801

19. The Framers' Concept of Citizenship & Ours

NEH SUMMER 1989 INSTITUTE

BOOK LIST

George Anastaplo. The Constitution of 1787 (Baltimore: Johns Hopkins, 1989)

Bernard Bailyn. The Ideological Origins of the American Revolution (Cambridge, MA: Belknap Press, 1967)

Edward Corwin. The "Higher Law" Background of American Constitutional Law (Ithaca: Cornell, 1955)

Kenneth Dolbeare & Linda Medcalf. American Ideologies Today (New York: Random House, 1988)

David Epstein. The Political Theory of The Federalist (Chicago: University of Chicago, 1984)

Forrest McDonald. The Presidency of George Washington (Lawrence: University of Kansas, 1974)

Charles McIlwain. Constitutionalism: Ancient and Modern. (Ithaca: Cornell, 1958)

Leonard Levy & Dennis Mahoney, eds. The Framing and Ratification of the Constitution (New York: Macmillan, 1987)

Edmund Morgan. The Meaning of Independence (New York: Norton, 1978)

Publius, vol 10, no. 4 (Fall 1980), Temple University, Center for the Study of Federalism

Clinton Rossiter. 1787: The Grand Convention (New York: Norton, 1987)

Gordon Wood. The Confederation and the Constitution (Lanham, MD: University Press of America, 1979)

----------. Creating the American Republic (New York: Norton, 1972)

Benjamin Wright. Consensus and Continuity (New York: Norton, 1967)

NEH SUMMER INSTITUTE

SYLLABUS

Day 1: Foundations of American Political Thought
Readings: Kenneth Dolbeare & Linda Medcalf, American Ideologies Today (New York: Random House, 1988)

Bernard Bailyn, The Ideological Origins of the American Revolution (Cambridge: Belknap Press, 1967), ch. 2, 3, 5

Day 2: Classical Antecedents of American Political Thought
Readings: Charles McIlwain, Constitutionalism: Ancient and Modern (Ithaca: Cornell University Press, 1947)

Daniel J. Elazar, "The Political Theory of Covenant: Biblical Origins and Modern Development," Publius 10,4, pp. 3-30

John Kincaid, "Influential Models of Political Association in the Western Tradition," Publius 10, 4, pp. 31-58.

Day 3: English Constitutionalism
Readings: Edward S. Corwin, The Higher Law Background of American Constitutional Law (Ithaca: Cornell University Press, 1961)

Vincent Ostrom, "Hobbes, Covenant and Constitution," Publius 10, 4, pp. 83-100

Donald S. Lutz, "From Covenant to Constitution in American Political Thought," Publius, 10, 4, pp. 101-134

Neal Riemer, "Covenant and the Federal Consitution," Publius 10, 4, pp. 135-148

Day 4: American Republicanism
Readings: Gordon S. Wood, The Creation of the American Republic, 1776-1787 (New York: Norton, 1972), ch. 2-3

Stephen L. Schechter, "The Founding of American Local Communities," Publius, 10, 4, pp. 165-185

Day 5: The Revolutionary Experience
Readings: Edmund Morgan. The Meaning of Independence (New York: Norton, 1978)

Bernard Bailyn. The Ideological Origins of the American Revolution (Cambridge, MA: Belknap Press, 1967), ch. 3-4.

Day 6: The Articles of Confederation
Readings: Bailyn, Ideological Origins, ch. 5

Day 7: The Argument Over a Stronger Government
Readings: Clinton Rossiter. 1787: The Grand Convention (New York: Norton, 1987), ch. 1-4

Day 8: Creating the Constitution at Philadelphia
Readings: Rossiter, 1787, ch. 5-12

Gordon Wood. The Confederation and the Constitution (Lanham, MD: University Press of America, 1979), pp. 1-36, 113-136

Benjamin Wright. Consensus and Continuity (New York: Norton, 1967)

Day 9: The Historical Context of the Convention
Readings: Bailyn, Ideological Origins, ch. 6

Wood, Confederation and Constitution, pp. 56-112

Day 10: "The Delicate Balance": The Document
Readings: George Anastaplo, The Constitution of 1787 (Baltimore: Johns Hopkins Press, 1989), pp. 26-73

Michael P. Zuckert, "A System Without Precedent: Federalism in the American Constitution," in Levy & Mahoney, eds., The Framing and Ratification of the Constitution (New York: Macmillan, 1987), pp. 132-150

Day 11: Further Study of the Original Constitution
Readings: Anastaplo, Constitution of 1787, pp. 89-148, 198-202, 215-224

Edward J. Erler, "The Constitution and the Separation of Powers," in Levy & Mahoney, Framing, pp. 151-166

Day 12: The Ratification Struggle
Readings: Murray P. Dry, "The Case Against Ratification: Anti-Federalist Constitutional Thought," in Levy & Mahoney, Framing, pp. 271-291

David F. Epstein, "The Case For Ratification: Federalist Constitutional Thought," in Levy & Mahoney, Framing, pp. 292-304

Charles W. Roll, Jr. "We, Some of the People: Apportionment in the Thirteen Conventions Ratifying the Constitution," Journal of American History (June 1969), 21-40.

Day 13: The Federalist Papers
Readings: David F. Epstein. The Political Theory of The Federalist (Chicago: University of Chicago Press, 1984), pp. 1-10, 59-110

Day 14: The Bill of Rights
Readings: Robert A. Rutland, "Framing and Ratifying the First Ten Amendments," in Levy & Mahoney, Framing, pp. 305-316

Leonard W. Levy, "The Bill of Rights," in Jack P. Greene, ed., Encyclopedia of American Political History (New York: Scribner's, 1984)

Day 15: Unresolved Questions in 1789
Readings: William M. Wiecek, "The Witch at the Christening: Slavery and the Constitution's Origins," in Levy & Mahoney, Framing, pp. 167-184

Ralph A. Rossum, "The Courts and the Judicial Power," in Levy & Mahoney, Framing, pp. 222-241

Charles A. Lofgren, "War Powers, Treaties, and the Constitution," in Levy and Mahoney, Framing, pp. 242-258

Forrest McDonald, "The Constitution and Hamiltonian Capitalism," in Robert A. Goldwin and William A. Schambra, eds., How Capitalistic Is the Constitution? (Washington: AEI, 1982)

Day 16: The Evolution of the Presidency to 1801
Readings: Jacob E. Cooke, "Organizing the New National Government," in Levy & Mahoney, Framing, pp. 317-332

Forrest McDonald. The Presidency of George Washington (Lawrence: University of Kansas Press, 1974), ch. 2, 5, 9

Day 17: The Evolution of Congress to 1801
Readings: John F. Hoadley, Origins of American Political Parties, 1789-1803 (Lexington: University Press of Kentucky, 1986), ch. 4, 9

Day 18: The Evolution of the Federal Courts to 1801
Readings: Richard Morris. John Jay, the Nation and the Court (Boston: Boston University Press, 1967), ch. 2

Carl Prince. The Federalists and the Origins of the U.S. Civil Service (New York: New York University Press, 1977), ch. 10

Day 19: The Framers: Their Concept of Citizenship & Ours
No readings

V. RECENT SCHOLARSHIP ON CONSTITUTIONAL ORIGINS

ORIGINS OF THE CONSTITUTION

I. Federalist, Progressive, and Consensus Historians

Those who studied American history in the 1950s and 1960s, and even into the 1970s, generally were taught to analyze the origins of the U.S. Constitution from the perspective of conflict/consensus. The original pioneers of the consensus view of the constitutional era were a group of 19th-century historians including George Bancroft, John Fiske, and John Bach McMaster. Viewing the Framers of the Constitution as almost akin to demi-gods, these "Federalist historians" identified strongly with those who had dominated the Philadelphia Convention and had then engineered the ratification of the Constitution.

Emerging in the period after the Civil War, the Federalist historians were deeply committed to the Union that had almost been lost, and--in the view of modern historians--therefore tended to idealize what had happened in Philadelphia, considerably overstating the problems of what they dubbed "the critical period" preceding 1787, and even demonizing, to some extent, the Anti-Federalists.

Their version of the Constitution's origins involved relatively minor conflict over the Constitution, and most of that attributable to the timidity or opportunism of a handful of Anti-federalists at odds with a powerful American consensus for change. Thus, for the Federalist historians, the Framers were simply inordinately brilliant and altruistic men who had come together in Philadelphia in 1787 in order to create a democratic government, and who had succeeded in that endeavor. The Framers had wanted nothing more complicated than to assure rule by the people and a guarantee of personal liberties. This view--that from the outset the Constitution embodied democratic principles--was for many years the conventional wisdom. It is still the view taught to small children, and it probably remains the view held by most Americans.

By contrast, the Progressive historians of the early 20th century, led by Charles Beard, provided a major challenge to what they saw as the overly simplistic paradigm of the Federalist historians. The Progressive historians saw the Constitution as the product of class conflict in Revolutionary era American society. From this point of view, the Constitution represented a counter-revolutionary triumph of an upper-class elite over the agrarian radical masses. The Federalist historians' "rationalist" conception of the Framers as motivated mainly by ideas of good government and proper political principles was hopelessly naive, in the Progressive historians' view. Far more realistic was a "materialist" conception of the Framers as men motivated primarily by their own economic interests. In Beard's famous words, the Framers were "immediately, directly, and personally interested in, and derived economic advantages from, the establishment of the new system." This view was carried forward in the 1940s and 1950s by historians like Merrill Jensen.

In the 1950s, the dominance of the Progressive historians began to erode as Beard's scholarship and methods were subjected to withering critiques. Consensus historians like Robert Brown and Forrest McDonald did great damage to Beard's specific thesis as it related to the issue of the securities holdings of the Framers. By demonstrating, for example, that the Federalist and Anti-Federalist coalitions had been roughly similar in terms of their economic holdings, such work made it made it very difficult to argue that the struggle over the Constitution had involved class conflict.

Robert Brown's conclusion, then, was that there had been a broad, middle-class consensus supporting the Constitution, in an America made up mainly of middle-class citizens. The Constitution was thus a fulfillment, not a betrayal, of the American Revolution. A middle-class, conservative Revolution had culminated in a middle-class, conservative Constitution. For McDonald, the struggle over the Constitution involved not class versus class, but at least seventy-five distinct interest groups contending against each other, not in an apocalyptic struggle, but--within a broad, peaceable consensus--in the normal pattern of democratic pluralist politics. Interestingly, both Brown and McDonald, while rejecting Beard's specific thesis regarding the interests of the Framers, nonetheless accepted his broader point that socio-economic forces were the prime forces that shaped the Constitution (though by the 1980s, McDonald's focus would also shift to the intellectual origins of the Constitution). There was to be no return with these scholars to the Federalist historians' rationalist conception, in which ideas, theories, principles, and doctrines were the main sources of Framers' decisions at Philadelphia.

Also important in the rise of consensus history on the origins of the Constitution were historians like Daniel Boorstin and Louis Hartz, who argued that class conflict had never been important in American society. This was partly for materialist reasons--the absence in America of the European feudal tradition that was the real source of class warfare. Moreover, the consequence of this lack of class warfare had been to make John Locke's ideas appear the natural order of things, rather than merely one possible perspective on politics and society. And because all Americans so effortlessly fell into an acceptance of Lockean ideas, the ideological conflict that characterized European society in the 19th and 20th centuries simply never developed in America.

In the United States, according to Boorstin and Hartz, everyone was a "liberal," in the Lockean sense of the term. That is, everyone believed in the primacy of the individual, rights against the government, and private property. This was an ideology that served as the perfect rationale for the pursuit of private interests, which was at the heart of American life. As a result, American politics had always been (and would continue to be) about relatively minor technical matters, rather than great moral choices.

Thus, in the 1950s, scholars like Boorstin and Hartz appeared to suggest that ideas--because there was so little disagreement about them and because they played primarily a rationalizing function for underlying private interests--were of secondary importance in understanding the origins of American society and politics. To understand America, it was necessary to view it as a society governed from the outset by a broad consensus which no one seriously challenged, and characterized therefore not by ideological conflict, but by the day-to-day compromises of a pluralistic society responsive to a multitude of interests.

In a similar vein, John Roche, a political scientist, set forth an analysis that saw the Constitution as less a class struggle than as the normal conflict of various groups in pluralist America. From his perspective, the Constitution could best be understood as simply a political compromise among the various interests contending within American society. Combining the Progressive historians' materialist conceptions with the ideas of the consensus school, Roche argued that the Framers could best be understood as "democratic politicians" operating within a pluralistic framework.

For Roche, then, the Framers did indeed represent competing interests in American life (e.g., South vs. North, large state vs. small-state, slave state vs. non-slave state, agriculture vs. commerce). But given a political context in which a broad consensus for change existed, they were able by wheeling and dealing to arrive at a compromise--the Constitution. The Constitution then, was not--as the Federalist historians had naively argued--the product of demi-gods seeking the ideal instrument for governing people, nor was it merely--as the Progressive historians had cynically argued--the product of the personal economic concerns of a handful of men gathered at Philadelphia. Rather, the Constitution truly epitomized the triumph of "politics," with "politics" to be understood not pejoratively, but rather as denoting one of the greatest of human inventions--a method for resolving human conflicts peacefully.

Yet if it seemed that conflict and consensus historians agreed that socio-economic forces had been the prime elements shaping the constitutional era, it was also true that something of a third school began to emerge in the 1950s. Led by Douglass Adair, Cecilia Kenyon, and Martin Diamond, a new group of scholars began to challenge the socio-economic interpretation of the Constitution. While generally adhering to the consensus view, they chose to focus upon the ideas of the Framers. Thus, they insisted, ideas rather than interests had, after all, been the dominant force at work in Philadelphia in 1787. The "Diamond thesis," for example, suggested that the struggle at the Convention had involved two competing visions of American society: the small republic versus the extended republic. Moreover, these contending visions had not reflected merely the private interests of the Framers, but genuinely differing views of how to achieve the best possible form of government. Thus, the ideas of the Framers could not be written off as mere rationalizations for their economic interests. Their ideas, their theories, their political philosophy really had mattered.

Over all the scholarly debates and arguments, of course, there hung the Lockean consensus referred to previously. If Locke had been, as virtually no seemed to doubt well into the 1960s, the single most source of the ideas that had provoked the American Revolution and ultimately led to the writing of the Constitution, it was important to understand precisely what Locke had said. Scholars reached a number of conclusions about the main outlines of Locke's political philosophy.

The Lockean consensus that shaped American thinking, and therefore its history, involved widespread, almost unconscious, agreement upon a few main ideas. Specifically, most scholars pointed to Locke's theories regarding (1) the inter-relationship of society, government, and the individual, (2) the place of private property, and (3) the meaning of "liberty."

Locke viewed society from an "atomistic" perspective (i.e., he saw individuals and their separate interests as the building blocks of society), and government as an artificial creation (i.e., a "social contract") of that society in response to the needs and demands of the people. Thus, the existence of government was rooted in the self-interest of individuals and served mainly to protect the rights which permitted the pursuit of individual self-interest. Thus, there existed no "common good" above and beyond what individuals considered good for themselves.

Private property was important to the Lockean conception, for the right to own and use such property was an important aspect of the pursuit of self-interest, and enabled people to protect themselves from the power of others. It is interesting to note that Locke believed acquisition of property should be limited to (1) that which man could improve by his labor, and (2) use (and even then, only if "there is enough, and as good left in common for others"). Still, even if Locke accepted limits on property that modern capitalism might find quaint, his orientation toward private property as a central aspect of self-interest was a major change from the republican conception (described below) it supplanted.

Finally, "liberty" for John Locke meant individual liberty, defined as an absence of restraints by government. It was the kind of freedom most easily defined--the freedom generally to do as one wished. The world could be conceived of as having begun with a "state of nature" in which man possessed certain natural rights--life, liberty, and property--and could do as he pleased. The social contract which created government put into place an institution that limited this freedom somewhat, but only to the least degree necessary, and with the consent of those whose freedom was being limited. "Rights" remained at the core of the Lockean worldview.

II. Counterattack Against Consensus

Although some imagine that the Progressive view faded away under the assaults of the powerful critiques of Beard's methodology made in the 1950s, Beard's views were reshaped and refined by "neo-Progressives" like Jackson Turner Main, who argued that there existed in the constitutional era something akin to political parties, "commercial-cosmopolites" versus "agrarian-localists," and that these became, respectively, the Federalists and Anti-federalists. Main portrayed the struggle between these groups as very much akin to class conflict, and this suggests that Charles Beard's ideas are still very much with us.

Moreover, the view that conflict shaped the Constitution could be found even among some who did not see economic conflict as the heart of the matter. Max Farrand, in his classic work, Framing of the Constitution of the United States (1913) had argued that small states versus large states had been the key dividing line at Philadelphia. Although long discredited by historians who saw the small state/large state dichotomy as a mere facade, behind which other, more important interest conflicts played themselves out, this view has recently been revived by scholars like Christopher Wolfe. Similarly, the idea of sectional conflict as the basis for the maneuverings and decisions at Philadelphia has made a comeback with the work of H. James Henderson and Joseph Davis & Steven Boyd. Another interesting possiblity for non-economically based conflict was that of Stanley Elkins and Eric McKittrick. Their proposal was that the struggle over the Constitution had been an early example of a "generation gap" at work, with aged localists and young continenentalists fighting over the future locus of power in America.

Refuting the notion that one had to choose between a conflict view and a consensus view, political scientists Calvin Jillson & Thornton Anderson, based on computer analysis of the votes taken at Philadelphia concluded that there was a great deal of consensus on the ideological issues that dominated the early stages of debate at the Constitutional Convention (e.g., safeguarding the principles of republican government). These issues, they found, were indeed discussed in the quiet, philosophic manner that a generation of Federalist historians would later idealize. On the other hand, Jillson & Anderson also found considerably more bitter conflict as materialistic and economic concerns (legislative apportionment, slavery, commerce, western lands) became dominant in the final stages of debate. It was only in this latter stage, Jillson and Anderson suggest, that disagreements began to threaten the breakup the Convention.

III. The Republican Revision

Thus, while the long-standing consensus/conflict debate has continued down to our time, it has been cross-cut by an interests/ideas debate. Indeed, most scholarly excitement over the past two decades has centered upon the "recovery" of a set of ideas influencing the Framers that was virtually unknown twenty-five years ago. This new approach, termed "the republican revision," originated in the mid- to late 1960s, as scholarly attention intensified regarding the ideas of the Framers. This time, however, the emphasis was upon philosophical sources of their thought other than John Locke. Historians like Bernard Bailyn, J.G.A. Pocock, and Gordon Wood began to argue that classical republicanism, especially in the form passed down through the English Opposition thought of the 17th and late 18th centuries, had had a far greater impact on American political thought than had John Locke.

Pocock, in particular, began a course of study rooted in an intensive linguistic analysis of the political documents produced in the constitutional era. He was looking, specifically, for the modes of political discourse which formed the conceptual framework of political belief for the world in which the Framers lived. How did people think about politics? What did their words mean to them? Political actors, after all, could not do that of which they could not conceive. Too often, Poock warned, scholars had made the mistake of judging past actions in terms of modern conceptions and ideas, carelessly imputing those conceptions and ideas retrospectively to political actors of the past. Imagining that what people said and did in the past meant to them what it does to us, was in Pocock's view, a grave error. Thus, the Founding had to be understood as a "linguistic and political process carried out in the context supplied by the times in which it took place." Only then could the process of recovering the long-buried "republican tradition" begin.

Looking at the American Revolution and the Constitutional Period, many scholars began to conclude that the Lockean consensus the consensus historians had substituted for the Progressive conflict model was more apparent than real. Instead, Locke's ideas were now seen as forerunners of modernism locked in deadly combat with a set of older, perhaps nobler ideas adhered to by most Americans. Even so familiar a document as James Madison's Federalist 10 was suddenly being analyzed as the epitome of the Lockean liberal triumph over the once-vigorous and demanding republican ideology that had made the American Revolution, but was running out of steam as a new world came into being.

For Bailyn, Pocock, Wood, and an increasingly large number of historians in the late 1960s and in the twenty or so years since then, the political idiom of the constitutional era was that of classical republicanism (sometimes also called "civic humanism"). Proponents of this view saw the Framers as influenced less by John Locke's classical liberalism (with its "live and let live" orientation), and more by the ideas of ancient Greek and Roman philosophers, Machiavelli, James Harrington, Algernon Sydney and the British Commonwealthmen, Lord Bolingbroke, James Burgh, and the English "Country" opposition to Sir Robert Walpole.

Attention shifted, therefore, to documents like Cato's Letters, written by John Trenchard and Thomas Gordon. One variant of the republican revision, pioneered by Gary Wills, pointed to the significance of the 18th century "Scottish Enlightenment," and the impact on the Framers of thinkers like Francis Hutcheson and David Hume. The key point, however, was that at the heart of American political thinking was a classical zeal for republican virtue. Not Lockean individualism, but communitarian values and the ennobling force of political life, were therefore the values that shaped 18th century America.

Americans were caught up, according to the republican revision, in the attitudes and ideas of the "Country" opposition that stood against Sir Robert Walpole's "Court" party. This "country" party was known variously as Old Whigs or Real Whigs, because the original Whigs, having come to power in 1688, had become too much like the Tories in their acquiescence to "Court" prerogatives. Known also as "Commonwealthmen," their views by the mid-18th century were of only minimal importance in England, but appear to have had far greater weight in America--as suggested by the fact that in the pre-Revolutionary period and in the struggle over the Constitution, many writers either took Old Whiggish pseudonyms, or imitated the Whig habit of using classical names (e.g., Agrippa, Agricola, Cato).

The key concern of Americans imbued with this republican tradition, was the struggle between power and liberty (but defined in a particular republican way that differed substantially from the Lockean definition), and their greatest fear was of "corruption" (referring primarily to moral decay, but also to any attempt by the government to increase its power). Moreover, republicans tended to see corrupting conspiracies everywhere, as indicated by a vocabulary replete with such pejorative terms as "aristocrats," "bishops," "standing armies," "stockjobbers," "luxury," and "monopolies."

For republicans, government power could only be controlled, and liberty thus preserved, by making legislatures strictly accountable to the people (e.g., by holding frequent elections and providing for instruction of representatives). Representatives were to be an accurate mirror of their constituencies; they were not to follow the Burkean principle by which representatives voted as they thought best, acting as "trustees" for their constituencies.

In addition, the Country opposition believed in a strict separation of the powers of government. By contrast, the Court party tended to prefer "mixed government," in which the different interests in society (monarchy, aristocracy, populace) could check each other, and thereby create a harmonious balance. Echos of this argument certainly seem present in the constitutional era debate between the Anti-federalists, who insisted that "checks and balances" undermined true "separation of powers," and the Federalists, who responded that the two principles were entirely compatible.

Thus, by the early 1770s, American republicans were certain that the English "republic" (as they viewed the reality of that government, with its sharply restrained monarchy) was in imminent danger of perishing as had all other earlier republics (e.g., Greece, Rome, Poland, Denmark). It had strayed too far from republican principles, and had allowed itself to succumb to corruption of various sorts. The English yeoman had lost what he had fought for so hard in England's 17th-century revolutions. Thus, the American Revolution had to be fought to reclaim for the colonists the republic that had been lost in the mother country.

Yet if classical republicanism worried about government structure and leadership, its central concept remained "civic virtue," primarily conceived of as subordination of private interests to the public good. Society was a homogeneous, organic entity and its citizens were obligated to participate in civic affairs, partly to assure the virtue of society, but also to foster their own virtue. Only by taking an active part in the political life of one's community, by performing one's civic duties, could an individual be truly a citizen, a virtuous person.

It is also important to understand that, for republicans, the public good had objective existence, and could be known to reasonable and virtuous people. It was not merely whatever policies happened to emerge from the clash of private interests, as Lockean liberalism (and its offspring, pluralist democracy) suggested. If Lockean liberalism was "atomistic" in its orientation, emphasizing individualism, self-fulfillment, and private rights, classical republicanism was "organic," emphasizing communitarianism, virtue, and obligations to the public good. For republicans, the dominant human concern had been civic participation; for liberals, it would become economic activity. America, in the words of old-fashioned Samuel Adams, was to be a "Christian Sparta," not the "commercial republic" men like Alexander Hamilton would later strive to create.

In contrast to the new-fangled ideas of John Locke, republicans continued to adhere to an older worldview. Republicans operated from an "organic" perspective, seeing society as a unified entity from which individuals drew the meaning of their lives, and government as a natural outgrowth of society. Government was not an artificial, external mechanism, separate from society and only sporadically poking its nose into people's lives, but rather an integral part of society, with pervasive involvement in the lives of its citizens. Government did not exist merely to keep the peace and guarantee the exercise of natural rights as individuals pursued their private interests, but rather to foster the general good of the entire community--which constituted something above and beyond the individuals who comprised it. It was a view much like that of classical philosophers like Aristotle, who had defined man as a "political animal," deriving his essential meaning from his place in the community and from his involvement in political life.

Although republicans believed in private property, their emphasis was quite different from that of John Locke. Private property was a useful institution to the extent that it benefited the entire community by fostering the civic virtue of its citizens, not because it conduced to the happiness of the individual. What was good about private land ownership, for example, was that it instilled the virtues of active citizenship: attachment to community, self-sufficiency, stability, wisdom. Owning property made one a better citizen, and whatever governmental regulation of property was necessary to foster such ends as benefited the common good was therefore legitimate. As the English Commonwealthman, Henry Ireton, had said in 1647: "The Law of God doth not give me property, nor the Law of Nature, but property is of human constitution. . . . Constitution founds property."

For republicans, "liberty" could not be something so ultimately meaningless as the right of the individual to do as he pleased. For this "negative" definition of liberty (liberty as absence of constraints), republicans substituted a "positive" definition (liberty as participation and contribution to a communal good). In the words of John Allen in 1774, liberty was "a power of acting agreeable to the laws which are made and enacted by the consent of the PEOPLE, and in no ways inconsistent with the natural rights of a single person, or the good of society."

Indeed, individual liberty was clearly secondary to political liberty (the right of the people as a whole to participate in their government). Thus, even a cursory reading of the Declaration of Independence might well suggest that it is a document owing much more to republican doctrines than to John Locke's classical liberalism.

John Diggins, in his provocatively-titled work, The Lost Soul of American Politics, has suggested that "Between Machiavelli and Locke lies the dilemma of American politics. Classical political philosophy aims to discipline man's desires and raise him far above his vulgar wants; liberalism promises to realize desires and satisfy wants. The first is more noble, the second more attainable." Thus, in order to be deemed successful, Lockean liberalism needed only to keep government under control so that it did not invade the domain of individual rights. Republicanism faced a much harder task, for it required civic virtue of its citizens, and this in turn required that citizens participate in government, and subordinate their personal interests to the common good.

To assure the continuation of such civic virtue, therefore, government was to work to maintain a pattern of widespread ownership of land, for republicans believed that though civic virtue was, to some extent, innate in people, it could nonetheless be further strengthened by broad distribution of land ownership. Land ownership created a connection to society that poverty certainly prevented, but that even trade and commerce could not foster. Jefferson's idealization of the "yeoman farmer" might therefore be seen as rooted less in Locke's ideas than in those of republicanism.

A second route to the strengthening of civic virtue was through education. Citizens could be taught civic virtue by their families, schools, and churches. Indeed, the best guarantee for a republic's survival was to increase the supply of virtue. This meant that there had to be more people of high moral character, and this in turn implied a governmental responsibility for creating such people. Clearly, Locke's classical liberalism, with its minimalist government, was at odds with such a notion.

To the extent that republicans had seen England as the root of all evil, the American Revolution was expected to solve the problem of corruption and to restore virtue to its proper place. But of course, this did not happen. Life after the Revolution was not, in its essentials, changed in any significant way. There was political independence from England, but people remained much the same as they had been before the Revolution. The consequence of this was that some portion of America's republicans became disillusioned, and began to look for alternative ways to achieve their ends.

IV. Republicans versus Liberals

It would be a mistake, of course, to believe that those who developed the republican revision agree on all particulars of the impact of civic humanism on American thought and history. Historians continue to debate, for example, just when the transformation from classical republicanism to Lockean liberalism took place. Some view that transformation as already virtually complete by 1787, while others see a much slower transformation, with vestiges of republicanism evident in the American political culture even down to the present day. Indeed, Pocock's view was that the Jeffersonian era represented a major resurgence of the classical ideal, though forced--under the inexorable pressures of modern capitalism and Lockean individualism--to depart from that ideal.

Joyce Appleby, on the other hand, saw the issue from almost exactly the opposite perspective--it was the Federalists who were guided by republican principles, while Thomas Jefferson and his followers represented a populist and liberal reaction to those principles. Thus, while there is surprisingly wide agreement (though hardly unanimity) that the Anti-federalists largely represented the republican tradition, there is considerably more disagreement about the extent to which the Federalists were still tied to republicanism or had managed to break with that tradition.

One well-known and popular perspective is that of Gordon Wood who, in The Creation of the American Republic, sought to synthesize the Progressive emphasis on clashing interests with the republican revision's emphasis on the power of ideas in the constitutional era. Wood's suggestion was that the rhetoric of the American Revolution had been egalitarian and anti-aristocratic, and that this had contributed to "the democratization of the American mind," resulting in more and more people becoming literate and politically aware. But while such a development might strike most today as democratic and therefore good, for the elite of that time, it only confirmed the truth of James Otis' words, "When the pot boils, the scum will rise."

Increasingly, "the scum"--ambitious unknowns--began to challenge the notables who made up America's governing elite, which was mainly republican in its outlook. Democratic ideas began to confront republican ones, and the neatly-ordered, civic-minded community based on civic virtue began to yield to rule by strivers who had taken advantage of the loosening of social restraints in the revolutionary era to raise themselves to a higher status, and to begin to exercise a real measure of political power. The concrete meaning of this for America's ruling class was an all-out battle between "the worthy" and "the licentious." As the elite saw it, the struggle now was between people who truly believed in a society rooted in civic virtue, and people whose only concern was money and power, and who cared not a whit for the good of the community.

The issue for the elite now was how to deal with this growing problem. Part of the elite called for a return to civic virtue and to classical republican principles. They opposed tinkering with government structures in ways that would put more power in the hands of a centralized government and thereby encourage trade and luxury. For this portion of the elite, America was in the grip of a moral crisis, and the only solution was a return to traditional morality. This was the group that came to be known as the Anti-federalists.

But if part of the elite thus became Anti-federalists, determined to hold onto republican principles and to fight the ugliness of self-interest and the commercial republic, the greater, more influential part of that elite accepted the inevitable and moved to use the new trends to its own advantage. Soon to be known as Federalists, these people worried about the new world the Revolution had created (or at least allowed to come into being). They saw all too much petty economic bickering among the states, and they worried about the development of "factions," laws for debtor relief, refusal to raise taxes to pay off government debts, a turn to paper money, talk in Rhode Island of redistributing property every thirteen years, and finally, Shays' Rebellion. Before long, this Federalist segment of the governing elite concluded that classical republicanism could no longer work because there were too many selfish men and not enough virtuous ones in America.

But since republican principles were, at least as a matter of rhetoric, deeply rooted in the American political culture, they could not simply be dropped. The trick for the Federalists thus became to salvage what was possible of "republicanism" by transforming the ideology underlying it--specifically, to invent "a republican remedy for republican ills," as Madison was to put it--to make up for the fact that America had lost its virtue.

One important part of this transformation would involve tinkering with the machinery of government so as to prevent rule by the "licentious." But perhaps even more important would be the de facto acceptance of Lockean liberalism. The effect of this would be to make legitimate the elite's own individual striving in the economic arena, and give them license once more to outstrip their nouveau riche challengers. This then, became the Federalist strategy--to change the ground rules of American life to their own advantage, but for much more subtle and complex reasons than the Progressive historians, with their lack of interest in the Framers' ideas were able to capture.

Thus, one can conceive of the struggle over the Constitution (and all it implied about America's future) as a struggle within America's elite. Federalists struggled toward the new Lockean liberalism and the commercial republic it would bring, sure that there was no real alternative, and willing to accept new modes of thought and behavior. Anti-federalists harkened back to an older tradition , tried to fight what they saw as "corruption," "centralization," and "acquisitiveness." They were equally sure that the old modes of thought and behavior were America's only hope of salvation.

The result of the Federalists' intellectual odyssey was to leave most of the masses holding on to an older republican tradition they were too weak to save. Although supported by the Anti-federalist portion of the traditional elite, the American people lost their fight against the Constitution, in what can be seen as the last gasp of classical republican values in America. Indeed, the rapidity with which the masses embraced Lockean liberalism and the commercial republic within just a few years prompted the staunch Anti-Federalist Mercy Otis Warren to conclude bitterly that "It may be modestly asserted that most of the inhabitants of America were too proud for monarchy, yet too poor for nobility, and it is to be feared, too selfish and avaricious for a virtuous republic."

From this perspective, therefore, it becomes possible to view the Anti-Federalists not as mere cranks and opportunists (as the Federalist historians had) nor as populist democrats (as the Progressive historians had), nor as "men of little faith" (as historian Cecilia Kenyon dubbed them), but more accurately as that segment of the republican elite that held fast to the old colors. It was the Anti-Federalists who adhered to the "Country" tradition, believing to the end in the potential for creating a more virtuous public, and arguing that a new Constitution would solve few problems if the people continued to slide into "luxury and extravagance".

Thus, the republican revision suggests that it was the Federalists, rather than the Anti-federalists, who were the "men of little faith." It was the Federalists, after all, who sought to create "a new science of politics" based upon a more "realistic" (some might say "cynical") view of the nature of man. Civic virtue was for them a noble ideal that could never be attained and that wise men should never expect to see in the real world. Instead, man was inevitably self-interested, and this self-interest had to be harnessed in such a way as to minimize its destructive potential.

The Federalist solution was to accept John Locke's liberal individualism, but to seek somehow to derive from it the benefits suggested in Bernard Mandeville's Fable of the Bees (1705). Mandeville had written of a beehive that in it, one could find:

> Millions endeavoring to supply
> Each other's lust and vanity
> Thus every part was full of vice,
> Yet the whole mass a paradise.

Perhaps America could be made to work like that beehive, in which individual selfishness somehow miraculously produced honey for all. This idea was, of course, worked out more fully by Adam Smith in The Wealth of Nations (who denied reliance on Mandeville), writing of "an invisible hand" that would turn private selfishness into economic bounty for all. David Hume, too, was writing in the mid-18th century of a method of governing that would somehow shape self-interested activities so as to make them yield the common good.

This idea that the proper system (e.g., for bees, a beehive) could transform the selfish pursuit of thousands of individual interests into the common good conformed to the Framers' view that something was needed to keep the Lockean system from flying apart. They sought to accommodate themselves to the new world that was being born--a world of trade and commerce, a world of selfishness--but to avoid becoming its prisoners. The solution that emerged, of course, was a theory of separation of powers and checks and balances, a way to structure government so that it would be "balanced," with the right people able to prevent it from going too far astray.

It was left to Publius in the Federalist Papers to explain the twist given by the Constitution to Montesquieu's doctrine of separation of powers. The new theory of checks and balances that had been added would be vital to keeping factions under control, by balancing the greed of a few against that of all the others. It was Madison in Federalist 10, therefore, who legimatized self-interest in American life by arguing that selfish conflict among various groups in society was a natural thing. The right government, he implied, was not one committed to some objective standard of the "common good," or the "public interest," but rather one that could achieve compromises among interest groups, and whose policies would serve as the record of those compromises. Government would no longer be an independent force striving towards some good, but merely the neutral register of what contending forces in society had decided upon.

Combined with the commercial republic that Alexander Hamilton would begin to shape in his tenure as Washington's Secretary of the Treasury, this "new science of politics" that the Constitution represented would send America a long way towards shaking loose from its republican traditions. And perhaps the rest of American history since then can be seen simply as our completion of that task.

V. The Liberal Counter-Revision

Inevitably, as is so often the case with scholarly analyses, the pendulum has begun to swing again in the 1980s, as historians have begun to question whether Locke has not been deprived of his rightful place in the origins of the American Republic, and whether the republican tradition was ever as strong and as separate a strand of thought as suggested.

Some historians, like Isaac Kramnick, have tried to show that the Framers were influenced by many strands of thought simultaneously, with ideas blending together, and becoming transformed from one into another. Kramnick argues that there was no single prevailing mode of discourse among the Framers and within America's political elite in the constitutional era. Rather, there existed a "paradigmatic pluralism," in which republicanism, Lockean liberalism, the Protestant ethic, and "the language of power and sovereignty" (most often associated with Alexander Hamilton) contended. The Constitution was written, therefore, in the context of "plural discourses," all of which played some part in shaping the constitutional outcome.

John Diggins argues that while the language of classical republicanism provided a ready source of emotionally charged words and categories that the colonists could use to justify their revolution, this did not mean that their ideas were not Lockean in origin. The limitation of Pocock's linguistic analysis, in other words, was that what people say and what they mean are not always identical. That republican ideas were popular guaranteed them a certain amount of lip-service; it did not guarantee that they would be the basis of actual behavior in the real world.

Indeed, an interesting analysis is that of Isaac Kramnick who demonstrates rather neatly how a term like "virtue" had already become so "transvalued" by the time of the American Revolution, that whatever reference it had once had to participation in public affairs and sacrifice for the common good, had already been subtly changed to an almost purely private meaning, to be measured in terms of individual gain and affluence.

Thus, while one might still find many references to civic virtue as the basis for a society in documents of the revolutionary and constitutional eras, it is not clear that the "virtue" referred to therein is the same "virtue" applauded in, for example, Cato's Letters. Indeed, those who read the Federalist Papers looking only at the various mechanisms created to limit power because people cannot be trusted, might be surprised to have their attention brought to Madison's not infrequent references to the importance of civic virtue as the basis for successful governance of a people. This might represent the hold of old republican ideas upon even James Madison, but it might also represent the hold of old republican words upon him even as he marched towards new liberal ideas.

Another approach can be found in the work of Richard Sinopoli, who proposes that republicanism had disappeared as a viable strand in American political thought long before the constitutional era. Thus, both the Federalists' and the Anti-federalists' references to civic virtue and civic obligation were to be seen not as genuine republican commitments, but rather as political socialization concepts derived from the thought of the liberal thinker, David Hume. Thus, even a political philosophy based on individual rights--as liberalism was--needed a way to assure obedience to government, and the inculcation of habits of obedience (rather than of true, autonomous civic virtue) demonstrates the extent to which liberalism was already in the saddle as the Constitution came to be written.

Finally, Thomas Pangle dismisses the republican revision in a few paragraphs, seeing in it not much more than "a romantic longing to discover, somewhere in the past, the roots of a prebourgeois and non-Lockean American 'soul.'" Pangle once again calls upon us to understand the enormous power of John Locke's words upon Americans increasingly disenchanted with the British sovereign. Only by probing into the Framers' understanding of Locke's ideas regarding God and Nature, private property, and individual rights can one begin to understand the "modern republicanism" upon which they founded a new American regime.

Thus, as we enter the nineties, the importance of John Locke for an understanding of the American polity is once more being trumpeted by scholars. The Lockean consensus returns, though in a far more sophisticated and complex form. Again, we find revisionism itself being revised, as part of the on-going process that is perpetually shaping the study of history. A casual observer coming to seek history's verdict on the origins of the Constitution may soon find John Locke once more solidly established, and hardly realize that a radically different view had held sway for the past twenty years.

ANTI-FEDERALISM

Two important questions that can be raised at the outset of any study of the Anti-Federalists are: (1) did they actually exist? and (2) assuming that they did, should they--just like the Federalists--also be considered "Founders" of the American republic?

The first question, as odd as it sounds, raises the issue of whether the group of writers and activists we today lump under the rubric "Anti-federalists" actually constituted, at the time, a distinct, organized group in the same way the "Federalists" did. Some Anti-federalists, for example, were opposed the new Constitution under any and all circumstances, while others were willing to accept it if certain key amendments could be secured. It has even been argued that at least some portion of the Anti-federalists did not really oppose the Constitution at all, but were determined to conduct a kind of "national seminar" to make certain that the American people understood fully the costs and consequences of the new governing document.

Thus, one might reasonably inquire as to whether the Anti-federalists were simply scattered individuals and factions or constituted a defined group, representing some cohesive philosophy, beyond being merely "anti?" Moreover, beyond the question of a common philosophy (or lack thereof), lies the further question of the extent to which those adhering to an anti-federalist view actually organized themselves in any systematic fashion.

The second question suggests that the Anti-Federalists had a profound impact on the shaping of the Constitution, so that even though they opposed its ratification, they made a major contribution to American government as we know it today. In the first place, one might point out that it was their opposition that necessitated the addition of a Bill of Rights shortly after ratification. Second, the public fears aroused by the Anti-Federalists forced the Federalists to moderate their rhetoric. That, in turn, forced them to moderate their behavior, making the Constitution something very different from what it might have been had the Federalists had total freedom to impose the kind of political order they truly wanted. Third, by accepting the Constitution once the ratification process had ended, the Anti-federalists helped to legitimatize the document and to bring about its acceptance by the American people. Finally, many Anti-federalist ideas remain very powerful within the American political culture, giving them a continuing influence in political debate down to the present day.

Herbert Storing has written an important book with the intriguing title, What the Anti-federalists Were For. The implication of this book, of course, is that the Anti-federalists were not simply scattered individuals opposed to the new Constitution, but a group with at least a fair amount of philosophical cohesion. This supplies an important corrective to the often-heard view that the Anti-federalists were merely a rag-tag assemblage of cranks and opportunists.

The Federalist historians, for example, viewed the Anti-federalists as made up of the worst elements of the community--debtors and speculators, paper money advocates, moonshiners. Indeed, they seemed to regard the Anti-federalists as ancestors of the Civil War Southern secessionists and of the 1880s Greenback movement, groups they strongly detested. From such a perspective, the Federalists were clearly heroes and demi-gods, while the Anti-Federalists skulked around the edges of history.

Although the Progressive historians were considerably more sympathetic to the Anti-federalists, viewing them as democrats and populists, the consensus historians of the 1950s again attacked the opponents of the Constitution as "men of little faith," differing from the Federalists not in anything so fundamental as interests or ideas, but rather only in their timidity and short-sightedness. The Anti-federalists were parochial politicians, demagogues, people afraid to take risks for a glorious future.

Given these older views, it is refreshing to discover today a sustained effort to assess the Anti-federalists on their own terms, and to distinguish them from the Federalists in terms of genuinely important beliefs about the nature of society and government. Storing concludes that there really was coherent Anti-federalist thought worthy of scholarly analysis. That thought can be assessed in terms of certain basic values and attitudes. First, the Anti-federalists were "conservative," in the traditional sense of resisting broad and rapid change. They saw the Constitution as undermining (1) law, (2) stability, (3) the Declaration of Independence (i.e., the principles of the American Revolution), and (4) federalism.

For the Anti-federalists, the Philadelphia Convention had exceeded its legal authority in scrapping the Articles of Confederation and was now proposing an end-run around the Articles' amending process as a way of securing ratification of the Constitution. A stable society was being disrupted (the Anti-federalists obviously did not accept the view that they were living in a "critical period," as Federalist historians later termed it), and to what end? To undermine the principles of 1776, thereby threatening the liberty of the individual and the sovereignty of the states.

The Anti-federalists also saw the new Constitution as bringing about an extended republic, rather than maintaining the small republics (i.e., the states) which, from the evidence of classical history, they believed, was the only way for rule by the people to survive. In an extended republic, the people would lose their attachment to the government, and governmental coercion (probably through a standing army) would inevitably have to replace popular consent. In an extended republic, moreover, there would have to be fewer representatives to represent larger numbers of people. Inevitably, with larger districts, the representatives would be less and less like the people they were supposed to represent, and therefore less and less responsible to the people.

Finally, the extended republic would necessarily mean that America would become one heterogeneous nation rather than remaining a loose alliance of relatively homogeneous states. This would, in all likelihood, mean extremes of wealth among the people, and a probable rise in the nation's foreign population, producing a diversity that would provoke more political clashes, substantially slow up governmental decision-making, and make it harder to achieve the common good.

Heterogeneity and a foreign population would also increase the extent of religious pluralism in the United States, and this would inevitably require the withdrawal of government from the religious sphere. The consequences of this would be a sharp decline in the civic virtue of the people, as government would no longer be able to work to foster such virtue through its main source, religious belief. Without civic virtue rooted in common religious principles, America would become merely a collection of selfish interests brokered by the government. Needless to say, that was not the America the Anti-federalists wanted.

Thus, although the Anti-federalists agreed that some strengthening of the Union was probably desirable, they questioned whether the cure being promoted by the Federalists was not worse than the disease. Were not the Federalists, for example, wildly exaggerating the extent of the problems under the Articles? Moreover, even if there really were serious problems, was it not it true that tinkering with government machinery, as the new Constitution did, would do little or nothing to ameliorate them? Would not the new Constitution foster a "commercial republic," and would not the material values thereby implied undercut even further the civic virtue whose recent decline was at the heart of all of America's problems? Finally, were not the Federalists guilty of seeking grandeur and world status, rather than peace and tranquility for America? As Patrick Henry warned: "You are not to inquire how your trade may be increased, nor how you are to become a great and powerful people, but how your liberties can be secured; for liberty ought to be the direct end of your Government."

A third complaint of the Anti-federalists was that the new Constitution would foster aristocracy. The House would be made up of too few representatives and would therefore be too distant from the people. The President looked too monarchical. The Court might be able to override the will of the people (one Anti-federalist writer, Brutus, even appears to have foreseen the rise of judicial review). Of particular concern was the failure of the Constitution as proposed to guarantee the right to trial by jury, thereby giving extraordinary power to federal judges. Interestingly, however, it was the Senate which most aroused the Anti-federalists' ire. Legislators not chosen directly the people, and serving six-year terms struck the Anti-federalists as potentially constituting the most dangerous branch of the government.

Finally, the Anti-federalists could be found complaining over and over again about the "complexity" of the proposed new government. As Patrick Henry saw it, what was being created by the Constitution was a government "of such an intricate and complicated nature, that no man on this earth can know its real operation." And if the American people could not understand their government, how could they possibly hope to control it?

Today, most people are in the habit of treating separation of powers and checks and balances as essentially equivalent, or as complementary principles. But for the Anti-federalists, they were very clearly opposites. To the extent that a branch of government had checks and balances that allowed it to interfere in the operations of the other branches of government, the principle of separation of powers had been breached in a dangerous way. Thus, a major complaint of the Anti-federalists was that the Constitution provided far too little separation of powers. How could the people ever hold a branch of government responsible for its actions if that branch shared its powers with another branch?

Despite all their arguments, however, the Anti-federalists, of course, lost. A number of ideas have been put forth seeking to explain this result. It has been suggested, for example, that at least some of the Anti-federalists did not really try very hard to win. At least one scholar has speculated that the Anti-federalists accepted the inevitability of the Constitution, but chose to engage in a kind of national seminar to force the American people and the Federalist leaders to understand the potential problems they were creating, so as to sensitize them to particular values that the Constitution under-protected, and to force them to consider the costs--not just the benefits--of the new political order that was being proposed.

More conventional explanations for the Anti-federalists' defeat would include the argument that they were simply very poor politicians. They certainly seem to have been out-maneuvered at virtually every turn in the ratification process. The Anti-federalists were clearly not as well organized as the Federalists, often seemed considerably less articulate, and did not have the same kinds of political connections. If the Federalists had the support of most of the nation's economic and political elite, as many have argued, then it is not surprising that the Anti-Federalists, with less money, less education, and less power, could not stop the Federalist juggernaut. A few Patrick Henrys, George Masons, and Elbridge Gerrys were simply no match for a determined elite's ability to shape public opinion in a favorable direction. Federalist domination of newspapers alone made the match a highly unequal one.

A second view would be that the Federalists were beneficiaries of a natural swing of the pendulum towards support for stronger government. The American people, as so often happens, were in the process of moving away from the argument that power is dangerous and must be constrained, towards the argument that the absence of power can also be a serious danger. Thus, just as government power came to be seen as a solution in the Progressive era and during the New Deal, so was this true in 1787. The Anti-federalists, from this perspective, were simply out of tune with the times.

A third point would suggest that the Federalists were extraordinarily skillful in appropriating the democratic and republican rhetoric of the Anti-federalists. Taking for themselves the name "Federalists" and forcing upon the opposition the negatively-tinged appellation "Anti-federalists" can be seen as a piece of marvelously clever gamesmanship. Moreover, although it was the "Anti-federalists" who favored the "federal principle"--the maintenance of state power--their name seemed to put them in opposition to a popular concept. Clearly, the Federalists succeeded in shucking off the Anti-federalist charge that they were opponents of the principles of the American Revolution.

Finally, one can point to broader social and economic trends at work in the Anti-federalists' world. They were, simply put, on the losing end of an argument about modernity. The "virtuous republic" they so longed for simply could not survive into the 19th century, and the transition to the "commercial republic" that would supplant it was already well under way. Civic virtue as the foundation for a society was already coming to seem hopelessly old-fashioned and naive compared to the more hard-headed and realistic principles of individual self-interest and private gain. As Mercy Otis Warren, a leading Anti-federalist and historian, bitterly concluded, "It may be modestly asserted that most of the inhabitants of America were too proud for monarchy, yet too poor for nobility, and it is to be feared, too selfish and avaricious for a virtuous republic."

THE FEDERALIST PAPERS

Though many think of the the Federalist Papers as a long-standing and authoritative interpretation of the U.S. Constitution, this is really, to a great extent, a twentieth-century notion. The Supreme Court, throughout the nineteenth century, for example, virtually never cited the Federalist Papers in the course of its decisions. Thus, interpretation of the Constitution went on for more than a hundred years without any real resort to the words of Publius.

Indeed, renewed attention to The Federalist came at the beginning of the 20th century, and usually in quite a hostile context. Woodrow Wilson, Henry Ford Jones, and Frank Goodnow--early political scientists--cited The Federalist mainly to attack them for attempting to justify the incoherent and chaotic principles of separation of powers and checks and balances.

Preferring the unitary English model, with its responsible party system, these political scientists saw ideas like those expressed in the Federalist Papers as the original sin that doomed any hope for a truly rational form of government in America. Carrying the attack a step further, Charles Beard almost single-handedly resurrected the study of Federalist 10, when he saw it as clear proof that the Framers had quite consciously analyzed government in terms of their economic interests and that they had deliberately created a stalemated government to stymie popular majorities and thereby protect those interests.

Thus, it was really only in the 1950s and 1960s that a more favorable assessment of the Federalist Papers began to develop. Specifically, it was scholars like Douglas Adair and Martin Diamond who began to reassess Beard's ideas about the anti-democratic character of The Federalist, arguing that Beard had failed to see its many democratic aspects. Diamond argued, for example, that the Framers were democrats--"sober democrats," who recognized people's frailties--but democrats nonetheless. Thus, the Federalist Papers represented a turning away from an unrealistically high set of ideals, wherein all citizens participated actively in their government, responded to a clear standard of the public good, and held their government strictly accountable. Rather, Publius was content to sketch out a "decent" system, where if virtue did not always triumph, at least evil rarely did.

Recent critics of Diamond's approach, like Gary Wills (arguing for the impact of the Scottish Enlightenment on Publius), and David Epstein (preferring to seek classical republican sources), have argued that the Federalist Papers were indeed concerned with civic virtue, the ennobling aspects of political life, and communitarian values, rather than with self-interest. Another critic, Daniel Howe, has also focused on the impact of the Scottish Enlightenment, although mainly upon the thinkers who developed "faculty psychology," and a new way of understanding the concept of self-interest.

Thus, far from being a long-settled issue, the significance and meaning of the Federalist Papers remains a subject for vigorous debate, with continuing attempts being made to describe more fully Publius' intellectual universe and the type of society and government "he" envisioned. And, of course, one can also find warnings from other scholars that there is no real reason at all to regard the Federalist Papers (or Federalist 10 in particular) as providing the authoritative exposition of the meaning and intention of the Constitution.

One useful beginning question to ask, therefore, is whether the Federalist Papers should be viewed as a rigorous work of political philosophy, having a timeless quality, and providing guidance down to our age, or merely as propaganda for a particular moment in history? Some (Charles Beard and Douglass Adair come immediately to mind) appear to have considered The Federalist genuine political theory, involving the same careful assessment of deep philosophical issues in a way that made them the equivalent of works by Plato, Machiavelli, Hume, or Marx.

Of course, if the Federalist Papers really do constitute a work of genuine political philosophy, then we are certainly obligated to expend great energy and effort in seeking to comprehend their meaning. Some scholars would insist very strongly that this is the case (though perhaps according a rather higher status to the classical thinkers than to Publius). On the other hand, others would ask how--given a Constitution that itself does not rest on a coherent, philosophically explicit set of ideas--the explication of such a document could possibly be said to constitute "philosophy." Indeed, it is unlikely that Madison and Hamilton ever imagined that they were philosophers akin to Hume, for example. They probably viewed themselves, at best, as "scholarly statesmen." This was, of course, no small thing, but it was far from aspiring to the rarefied realms of true political philosophy.

A somewhat less exalted view of The Federalist argues that even if it need not be considered a serious work of philosophy, it does contain the leading ideas of Hamilton and Madison about government in America, and should therefore continue to guide us in interpreting the Constitution. Thus, the claim is made that because these two men were of such great importance in the origins of the American republic--Madison at Philadelphia and Hamilton in the first government--such clear expressions of their views must be taken as invaluable evidence regarding the meaning and purpose of the U.S. Constitution.

A related question that has intrigued students of The Federalist is whether it should be seen as representing one voice or two. John Jay is not usually taken into account in this matter because he fell ill after having written only five essays, all but one appearing early in the series. We do know, however, that Madison and Hamilton had many very serious differences between themselves regarding the nature of government. Therefore, to view the Federalist Papers as one coherent work, one would have to believe that the two were nonetheless able to arrive at some fundamental agreement about the meaning of the Constitution. On the other hand, one might argue that Hamilton and Madison's disagreements--clearly very sharp ones by the 1790s--were already so great in 1787 that Publius necessarily represents a "split personality," as Alpheus T. Mason referred to "him" in a famous article. If Mason's viewpoint is correct, then the claim that The Federalist generates a genuine political theory by which America can be governed is sharply undercut.

Of course, if the Federalist Papers were merely the equivalent of propaganda leaflets in a political struggle, quickly patched together by Hamilton and Madison to serve the political purposes of the moment, then they do not even necessarily represent the actual views of either Hamilton or Madison (let alone the aggolomeration known as "the Framers"), and need hardly be taken seriously today as a guide to the direction that should be taken by the American polity. From that perspective, a strong argument could be made that the Federalist Papers expressed the genuine views neither of one man known as Publius, nor of two men named Hamilton and Madison, but rather of no one at all.

It is significant, for example, that neither Madison nor Hamilton wholeheartedly supported the Constitution, each believing that the compromises agreed to at Philadelphia had left the central government too weak for the nation's needs. Hamilton, as is widely known, left Philadelphia before the Convention ended, only returning for the signing. His views were accorded little weight in the Convention's deliberations. Madison, at the end of the Convention, bemoaned the fact that he had been unable to win such essential features as a national veto over state legislation, and therefore saw his efforts at Philadelphia as a monumental failure.

Thus, the essays of the Federalist Papers can be seen as having a forced quality, the work of men who seemed to have viewed the Constitution only as better than nothing. The Federalist gives no hint, for example, of Madison's despair that his plan for a national veto had not been accepted, nor that Hamilton, immediately upon the creation of the new government, would see a need for the "loose interpretation" that would so fundamentally alter the Constitution's literal words. Nor in Madison's powerful advocacy of the Constitution in The Federalist do we catch any hint of how quickly he would have to argue for immediate change in the form of the amendments we today call the Bill of Rights.

Indeed, it is interesting to note that both Hamilton and Madison seemed largely indifferent to the Federalist Papers in later years, even after their role in its writing and publication was revealed publicly. Madison, for example, responded very coolly to Jefferson's proposal to place The Federalist on the required reading list at the University of Virginia, hardly the reaction one would expect had he truly regarded it as a work for the ages. Madison himself wrote in 1821 that: "As a guide in expounding and applying the provisions of the Constitution, the debates and incidental decisions of the Convention can have no authoritative character...[T]he legitimate meaning of the Instrument must be derived from the text itself...." Thus, if even the convention debates were not to be decisive as to the meaning of the Constitution, how could a series of newspaper articles published in New York months later have any such character?

Moving to a more concrete question, one might ask just how much effect the Federalist Papers actually had in the ratification struggle. Because there is today such great scholarly interest in The Federalist, it is often assumed that it must have been a decisive force in the ratification struggle after the Convention. Yet we have the report of the French charge in New York that "That work is of no use to the well-informed, and it is too learned and too long for the ignorant," a conclusion that seems quite sensible.

It seems likely, therefore, that, at most, The Federalist was read by a few thousand readers in New York City, and by some additional small numbers in Boston, Richmond, and Philadelphia. Moreover, even in New York--where its impact was clearly the greatest--it is far likelier that ratification was the result of (1) the direct influence of powerful political personalities like Hamilton and Jay, (2) the high reputations of the men who had been the Framers at Philadelphia, and (3) the fact that ten states had already ratified the Constitution by the time New York came to consider the issue, putting enormous pressure on the Empire State to do likewise.

At a certain point, as one considers all of the objections to the significance of the Federalist Papers--it is not a philosophical work, it does not embody the views of Hamilton or Madison (let alone the Framers), it had little or no impact on ratification of the Constitution--one might reasonably ask why any thought at all is given to it. Yet though the objections cited above make it hard to understand just why it should be so, The Federalist has clearly had an impact on our thinking about the Constitution, .

An interesting answer to this puzzle can be found in the work of Albert Furtwangler, who takes as his theme "the authority of Publius," and asks from where that authority stems. Furtwangler clearly de-emphasizes the content of the Federalist Papers, and asks us instead to consider more carefully what he calls "the form of the Federalist." Considered properly, he concludes, it is not so much what Publius says that matters, as how he says it.

For example, Federalist 1 begins with the promise that, "In the progress of this discussion I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance that may seem to have any claim to your attention." In other words, Publius states at the outset his refusal to engage in polemics, but to try instead simply to give "a satisfactory answer" to all serious arguments that have been made against the Constitution.

Thus, much of the "authority of Publius" (i.e., its power to shape public thinking on the issue of the Constitution) comes from its form, in particular, from what was then called "candor," meaning fair-mindedness and absence of malice. The tone of The Federalist--calm and reasoned--was a superb debater's trick, winning respect for the writer not by questioning the motives of opponents, but rather by according them great respect, and attributing their opposition to error rather than evil intent. Publius puts himself forward as the epitome of patience and restraint in the face of what might be deemed unwarranted attacks. There is no mention by name of attackers, with the one exception of Cato, and even that one exception is immediately apologized for.

Thus, Publius seems to have hoped that readers of The Federalist would carry over to the Constitution itself this sense of its defenders as preeminently civilized and decent men, rational and deliberate in their thought. It was, after all, essential not merely to pass the Constitution over virulent objections, but to develop a national sense of unity and good will. Sheer political power would not accomplish the task of building a new republic. Rather, the Constitution would have to defeat strong objections, while simultaneously rising above them so as to produce wide-spread public confidence and universal willingness to work with the new government. Thus, the "candor" of the Federalist Papers was aimed directly at its opponents, seeking to persuade them not just of Publius' personal decency, but also that of the Philadelphia Convention, the Constitution, and the new national government.

Towards this end, The Federalist Papers stress the positive achievements of the American people (establishing and maintaining the Union despite problems) and their common heritage. Publius asserts that "as there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature, which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form." (Federalist 55). We do not often associate an optimistic view of mankind and an emphasis on civic virtue with the Federalist Papers, but it may be present therein to a greater extent than might be initially supposed.

There is also the appearance in The Federalist of a very strict rationalism. Publius frequently points, for example, to things that are "self-evident," such as the need for government to have power in advance to deal with all exigencies. There is a great reliance on axioms, first principles, and primary truths, so as to give the appearance of rigorous deductive logic, rather than mere political argumentation, at work.

It is important to remember that the Federalist Papers appeared in the context of a general rise in the influence of the periodical press and other mass media of communication. This development was already beginning to undermine such traditional forms of communication and influence as the pulpit, the parliament, and the crown. Thus, The Federalist sought its authority neither from God, nor from raw power, as had been the norm with past regimes, but from the force of rational debate, the winner of that debate to be judged by the people. Thus, the entire concept of the Federalist Papers appears deeply rooted in the belief that civilized people can sit down, reason together, and with good will arrive at a satisfactory conclusion. Implicitly, therefore, a very modern view underlay the form of the Federalist Papers.

Publius asks, in Federalist 1, "whether societies are really capable or not, of establishing good government from reflection and choice." From this perspective, the Constitution and the Federalist Papers can be seen as in a symbiotic relation--a new government that was asking for the consent of the people had to have a people capable of giving that consent. The Federalist Papers were, therefore, in some sense, helping to create a people informed enough to give their consent in a meaningful way.

Furtwangler's final purpose is to show the limits of Publius' authority, for only to the extent that the relatively upper-class and modernistic notion of literate civility was accepted, could the Federalist Papers have genuine appeal. For those who regarded rational argumentation as an affectation of the rich and educated, and who therefore rejected most of what the "modern world" was bringing, The Federalist's arguments meant less than nothing. In the complaints of a man like Amos Singletary at the Massachusetts Convention that ratified the Constitution, one sees the ultimate obstacle to Publius' efforts to gain authority. To Singletary, and no doubt to thousands of others, the Federalist Papers represented little more than big-city, lawyerly smooth-talking, and the Constitution it advocated was merely the slick product of such men.

Government, after all, came from God, not men. It was a natural thing, not something men sat down and created. The Federalist Papers were therefore defending a document that challenged God, and the honest god-fearing people of the United States put their souls in peril by accepting such a document. Thus did the rejection of the Constitution by Singletary at the Massachusetts Convention demonstrate the limits of Publius' authority, for Publius could only reach modern men who accepted the Enlightenment's idea that the world should be governed by reason. Publius' authority did not extend to those who lived in an older world, governed by an entirely different set of principles for determining right and wrong.

RATIFICATION OF THE CONSTITUTION

On September 28, 1787, within two weeks of the end of the Constitutional Convention in Philadelphia, the Confederation Congress--the federal legislature under the Articles of Confederation--voted to transmit the Constitution to the States. Congress recommended that the state legislatures call special conventions elected by the people to consider ratification in accordance with the requirements of Article VII of the new Constitution.

Most historians seem to agree that had a national referendum been held in December 1787, the Anti-Federalists would have prevailed by at least a narrow margin, and perhaps even more than that. A direct popular vote at that moment, in other words, would have resulted in the defeat of the proposed Constitution, and retention of the Articles of Confederation. However, no such national referendum was held, and the political forces at work within the various states, as they moved one-by-one through the process of convening special ratifying conventions, produced a different result than the American people voting directly might have. Indeed, an interesting study by Charles W. Roll, Jr. concluded that the Federalists had malapportioned the districts which chose representatives to the state ratifying conventions so as to give a considerable advantage to supporters of the Constitution.

Moreover, it is important to remember that the pressures for and against ratification of the Constitution were not uniform throughout the United States. The states were sufficiently different in terms of their various characteristics so that whatever broad forces were at work clearly affected different states in different ways. The result was that some states ratified overwhelmingly, some by narrow margins, some insisting upon conditions, and some only after at least a measure of chicanery. Conley & Kaminski's The Constitution and the States, for example, provides a fascinating glimpse into the forces at work in each of the thirteen states asked to ratify the original constitution.

A standard view of the period up to and including constitutional ratification is that it constituted a "Critical Period." The Federalist historians, in particular, argued that the main pressures for creating and ratifying a new constitution resulted from various problems with which the central government under the Articles of Confederation could not effectively cope. These historians pointed especially to chaotic conditions in interstate commerce and to the inability of the central government to tax. From this perspective, Shays' Rebellion in western Massachusetts in 1786 is often cited as the last straw that convinced the nation's political leaders that a new government was necessary. Progressive historians like Charles Beard differed from the Federalist historians mainly in seeing the "Critical Period" as "critical" primarily for a powerful economic elite, rather than for the nation as a whole. However, they concurred with the Federalist historians in viewing the struggle for a new Constitution as rooted in domestic considerations.

An alternative viewpoint, however, is that proposed by William Riker in 1964--a "military interpretation of the Constitution." Riker suggests that we may have tended to underestimate the Framers' fears regarding national security in the mid-1780s. The fact that external attack was a matter of little or no concern for America between the end of the War of 1812 and the Soviet Union's development of nuclear weapons after World War II may have led historians retrospectively to underestimate the Framers' fears of such attack. Because American politics was dominated mainly by domestic concerns until well into the twentieth century, it is possible that scholars up to that time failed to give sufficient consideration to the possibility that international concerns had played a far more signficant role in American politics in the eighteenth century.

Riker cites, for example, letters in which George Washington complained to the Marquis de Lafayette between 1785 and 1787 of the United States' military weakness (e.g., his fear that Kentucky might voluntarily join with Spain). James Madison in 1786 circulated a manuscript critique of the Articles of Confederation headed by military/diplomatic complaints which comprised five of the eleven items he discussed in that manuscript. John Jay, who had the task of preparing the first five of the Federalist Papers to be published focused his analysis primarily on military/diplomatic issues.

From Riker's perspective, it appeared that the Framers' main concern was essentially to achieve a unitary government (i.e., the Virginia Plan), but that--for political reasons--it became necessary to yield to various conditions that weakened the proposed central government. Nonetheless, the Framers yielded on as few points as possible, and on those only because the alternative of military conquest of the recalcitrant states would have had prohibitive costs and probably would not have succeeded.

Writing in 1971, Frederick Marks also saw foreign affairs as "the winning issue" in the campaign for ratification, showing, for example, how the Federalist Papers used foreign policy and military justifications far more than is commonly recognized. For example, a key argument in favor of long terms for Senators was that they would need familiarity with complex foreign policy issues.

Writing again in 1986, Marks argued that "the strongest driving force behind the Constitution by far was a crying weakness in the area of foreign affairs." America had been generally optimistic about its role in the world through about 1785 (with even the usually pessimistic John Adams seeing few problems for the new American nation), but this optimism became far shakier in 1786-87, so that in arguing with the American people for ratification of the Constitution, great emphasis was placed by the Constitution's supporters upon: (1) America's military weakness and insecurity, (2) benefits to commerce with other nations that would result from a stronger central government, and (3) the need to salvage America's national pride.

Supporters of the Constitution argued that America was in danger of foreign invasion. War with England and/or Spain was put forth as likely to result, given the new nation's encirclement by Canada to the North and New Spain to the South and West. Foreign intervention might result from the attempts of other nations to assure payment of foreign creditors, with all states being dragged into war because a few would not pay their debts. Clearly, the Federalists argued, America needed a standing army, which the near-bankruptcy of the Confederation and current ideological constraints (i.e., the hostility of republican principles to standing armies) now prevented.

The Anti-Federalists argued that invasion would never come, but that if it did, that would be the time to begin worrying about defense. The Federalists, on the other hand, saw immediate and genuine problems looming on the horizon. Along the borders, for example, the British were strengthening their forces, encouraging Indian hostilities, and refusing to leave until the United States honored the Paris Treaty and recompensed Tories for property seizures. Many backwoodsmen were being killed as a result of these British-Indian pressures, perhaps 1500 just in Kentucky from 1783-1790. Georgia was facing full-scale Indian hostilities, and with the experience of British conquest and occupation still relatively fresh, may have given great weight to the Federalist arguments. Chiefs Joseph Brant and Alexander McGillivray mustered sizeable Indian concentrations backed by England and Spain, and seven to eight thousand Creek warriors threatened Savannah, Georgia in 1786. Similar pressures were also being felt in next-door South Carolina.

Supporters of the Constitution were quick to point out to South that New England had borne a disproportionate manpower and financial burden in fighting the British. Massachusetts and New Hampshire, for example, had provided half the American Army from 1776 to 1778, leading to some of its current economic distress. Were the South to be attacked in the near future, asked the Federalists, would the North have sufficient resources to able to help, even if it wanted to?

Nor was the South alone in its vulnerability. Supporters of the Constitution pointed out that New Hampshire was vulnerable to attacks from Canada. Similarly, in any serious conflict, New York could not hold Long Island or Staten Island, As for upstate New York, it had five British posts within its borders, also faced Indian wars, had to contend with a potentially hostile Vermont, and also with British Canada.

Moreover, the Federalists argued, military preparedness was the surest route to the prevention of war in the first place. A strong, united nation would scare off potential military adversaries and perhaps thereby be able to avoid having to fight at all. A weak nation invited the attention of aggressors. This argument, was surprisingly appealing to Quakers, who stood for pacifist principles.

The Federalists also played upon a fear of British spies, and of purported British plans to divide and conquer the states and appoint men like Benedict Arnold as their governors. The fact that Vermont officials and leaders of Shays' Rebellion were known to be in touch with the British raised the level of anxiety in the North. Indeed, Marks argues that Shays' Rebellion was seen at the time it occurred far less in terms of a class rebellion than as an opening for British Canada to intervene in the northern United States.

In addition to fear of military attack, a second line of argument by the Federalists stressed the commercial benefits of the new Constitution. Here the emphasis was not solely on the advantages to <u>interstate</u> commerce--the focus of most interpretations of the ratification process--but also to <u>foreign</u> commerce. The Federalists insisted that the United States faced a considerable number of severe problems in the international economic arena in the near future. These included:

(1) British exclusion of American shipping and trade from the West Indies and restrictions on trade with Britain proper, hurting especially shipbuilders and shipowners, Nantucket whalers, and fishermen

(2) the unexpected failure of the French to provide a counter-balance to Great Britain by allowing Americans into the French West Indies

(3) the harassment of fur traders in the Northwest, where British outposts remained from Niagara to Detroit, and in the Ohio valley

(4) Spain's refusal to let American ships sail past New Orleans, and its claims to land which Britain had ceded to the United States in the Treaty of Paris, extending as far north as the Ohio River

(5) the increasing boldness of the Barbary pirates, with Algiers, Tunis, and Tripoli preying on American ships, thereby reducing Mediterranean trade sharply, while the United States Navy--severely cut back after the American Revolution--could do little or nothing

Finally, concludes Marks, even in the South, long thought to be far less concerned than the Northeast with foreign commerce, Virginia and Maryland were driving forces in trying to deal with this particular weakness of the Confederation. They sought ways, for example, to empower the United States to retaliate against foreign trade restrictions that hurt local farmers seeking to export their produce. Even Patrick Henry, a staunch opponent of the Constitution, tacitly admitted that the Commerce Clause would finally give the America a measure of bargaining power against England.

The third prong of the Federalist onslaught on behalf of the Constitution, after military and commercial considerations, was the matter of national pride. Federalist arguments of the era constantly emphasized tales of the shabbiness of treatment of Americans abroad. American ships were constantly being attacked, Algiers was holding Americans hostage, American envoys abroad were unable to entertain in the manner to which diplomats were accustomed and were therefore held at arms' length and snubbed by the European diplomatic community.

Moreover, even at home, secession talk was beginning to be heard, and the Federalists sought to use such talk to persuade the other states to listen to reason and accept a stronger government that could restore national pride. The West seemed increasingly to be looking to England or Spain for help with commerce and the Indians, causing Washington to remark that the West stood upon a pivot, the "touch of a feather" turning it either way. Secession talk in New England created the specter of the United States, its West already gone, eventually becoming three nations: New England, the Middle States (including perhaps Maryland and Virginia), and the South. National pride demanded action against such a fearsome and humiliating prospect.

Thus, even if only as a corrective to the general tendency to over-emphasize domestic concerns in the ratification of the Constitution, it is probably quite useful to consider the alternative view sketched above. Considerations of foreign and military policy need to be given greater weight in assessing the factors that helped to bring about ratification of the Constitution.

THE BILL OF RIGHTS

The conventional wisdom about the Bill of Rights is that the Framers in Philadelphia neglected to assure the rights of the people in the original Constitution, that the Anti-federalists complained, and that the Federalists--to assure speedy ratification--agreed to make a Bill of Rights an early order of business in the first Congress convened after ratification.

The view of the Progressive historians treated the matter rather more cynically, seeing in the Framers' failure to incorporate guarantees of the people's liberties, not mere forgetfulness, but rather a natural result of their upper class biases, their hostility to liberty and democracy, and their contempt for the masses of ordinary people.

What neither of these views captures, however, is the intricacy and subtlety of the politics at play in the entire affair. Here, Leonard Levy's work provides an exceptionally arresting account of the origin of the Bill of Rights, one in which the heroes and villains become a bit more difficult to distinguish from one another.

The Bill of Rights can be said to owe its birth mainly to the efforts of George Mason of Virginia. Because James Madison (a fellow Virginian) was too busy juggling a number of balls at the Convention, he seems to have failed to cultivate Mason sufficiently. The result was that Mason became increasingly isolated in the Convention's final stages. On September 12, 1787--as the Convention drew to a close--Mason appealed to the assembled delegates to preface the Constitution with a Bill of Rights. He argued that such a Bill was vital to the rights of the American people and that it could easily be prepared in a matter of a few hours. Mason's plea was unanimously turned down by the other delegates, including even his own Virginia colleagues.

Mason ultimately refused to sign the Constitution and appears to have left Philadelphia in something of a huff, prepared to launch a full-scale fight against the Constitution, which he opposed for many reasons besides the lack of a Bill of Rights. He quickly found, however, that the argument that immediately touched a raw nerve in a public that was already ambivalent about the new document was lack of a Bill of Rights.

The immediate political impact of this popular outcry was to make it crystal-clear to Madison that a major tactical error had been made at Philadelphia when the Convention refused to append a Bill of Rights to the Constitution. A modern social scientist might well conclude that some kind of "group-think" mentality had come to pervade the Philadelphia Convention in its last days and that a growing sense of infallibility resulted in its failure to consider fully all options with their attendant costs and benefits. For whatever reasons, it became increasingly obvious that the Framers had put themselves into a fundamentally indefensible position.

In general, Madison was a man rather greatly concerned with public opinion ever since the only election he had lost, a race for the Virginia legislature in 1777, where he tried to set a moral example by refusing to bring spirits to the polling place. On top of a hostile public opinion, Madison soon heard from his good friend, Thomas Jefferson, America's envoy in Paris, that there were a few problems with the Constitution as proposed: "First, the omission of a bill of rights. . . ." Even the conservative John Adams, from England, asked whether a Declaration of Rights should not have been made the opening of the Constitution. All this suggested to Madison that the Convention had rather seriously misread public concerns about this issue, and that in trying to finesse the issue with philosophical quibbles and nitpicking legalisms, the Federalists genuinely risked losing the larger contest--ratification of the Constitution.

The Federalists had attempted to deflect demands for a Bill of Rights through a number of arguments. They had, for example, made the rather technical philosophical point at the Convention that there was no need to protect "natural rights" in the Constitution because the creation of the state governments during the Revolution had already ended the state of nature. All that was necessary now was to protect certain "ancillary rights" that existed <u>within</u> society, not natural rights. Thus, guarantees for certain "rights modified by society"--trial by jury in criminal cases, a tight definition of treason, protections for speech and debate for legislators, a republican form of government--had already been inserted into the body of the Constitution by the Committee of Detail. A few others had later been added on the Floor of the Convention: no ex post facto laws; no bills of attainder; a guarantee of habeas corpus; no religious tests for office. The result, in Levy's words, was that ". . . all the protections written into the Constitution were means of vindicating natural rights but no natural rights were constitutionally protected."

Furthermore, the Federalists argued, there was really no need to protect such rights in the Constitution, because as Alexander Hamilton wrote in Federalist 84, "the Constitution is itself, in every rational sense, and to every useful purpose, a Bill of Rights." Because the Constitution only gave the central government powers through enumeration, no powers to limit rights existed except to the extent specified in the Constitution's text. The federal government could only do that which the Constitution specifically empowered it to do. In the absence of any stated power to limit natural rights, the federal government would be unable to do so in any event. Therefore, there was no need to deny to the federal government any such powers when the absence of a grant of powers already amounted to such a denial. The point of a constitution, after all, was to structure a government and to enumerate its powers, not to protect rights that needed no protection in the first place.

Having argued that a bill of rights was unnecessary, the Federalists also argued that, even if adopted, such a listing of rights would prove useless. After all, was it not true that states without bills of rights were no less free than states with them? And in some of the states with such bills of rights, had it not been shown that they were really no more than "parchment barriers" bound to be ignored when "public necessity" was seen by public opinion as requiring their subordination. Any of the delegates to Philadelphia could have cited a number of examples of clear violations of civil liberties in states with bills of rights.

Indeed, argued the Federalists, a bill of rights was not only unnecessary and ineffectual, but could prove an actual danger to liberty. As Alexander Hamilton put it in Federalist 84 (probably without much sincerity), "I go further, and affirm that bills of rights . . . are not only unnecessary in the proposed constitution, but would even be dangerous." To begin to list specific rights of the people was actually dangerous because the failure to list a right might well be construed in the future as a deliberate decision to withhold it from the people. Indeed, the variations in what various state constitutions protected (except for jury trial and free exercise of religion) highlighted the problem of coming up with one clearcut list acceptable to all. Any federal bill of rights was bound to leave out something, and thereby endanger those rights.

A final argument--again almost certainly an insincere one--was that while England, given its long monarchical and aristocratic traditions, might have need of a bill of rights, in America the people did not need to protect themselves from themselves. In the words of Edmund Randolph: "Our situation is radically different from that of the people of England. What have we to do with bills of rights?"

Of course, each of these arguments was refutable, and the Anti-federalists were quite willing to make those refutations. As to natural rights philosophy, for example, the Anti-federalists pointed out that many non-natural rights ("rights within society") were not protected in the body of the Constitution. Therefore, a bill of rights could be justified, in part, as a protection for non-natural rights the Framers had missed at Philadelphia (e.g., freedom of the press, limits on search warrants, protection against self-incrimination, a guarantee of reasonable bail). Moreover, at least one natural right <u>was</u> protected in the original Constitution, despite the Framers' claims that such had not been necessary. The right to ownership and use of property was a natural right according to John Locke, and had been protected at Philadelphia in the clause placing limits on state impairment of the obligation of contract.

And was it really true that the federal government could not abridge the people's rights simply because the Constitution created a federal government based on enumerated grants of power? The "necessary and proper" clause, after all, went beyond those enumerated powers, and combined with the supremacy clause, this appeared to give the federal government something more than the enumerated powers. Could not the taxing power, for example, be used to tax the press, and thereby beat it into submission? Could not categories of federal crime be created with no protections for those tried?

Moreover, if the people's rights needed no protection from the federal government, why had it been necessary to have Article I, Section 9 of the Constitution, limiting federal power in very specific ways (no ex post facto, no bill of attainder, no suspension of habeas corpus). Surely, the federal government had never been empowered by a specific grant to interfere with any of those rights. And could not the Constitution's failure to list other rights in Article I, Section 9 therefore be seen as an implication that the federal government <u>could</u> limit such other rights?

The Anti-federalists also argued that even if a bill of rights was a only "parchment barrier," it could nonetheless serve to educate the people as to the meaning of liberty. It would provide a beacon for the people, a call to conscience to aid in the protection of political minorities. Thomas Jefferson, later an opponent of judicial review, even made the argument to Madison that the value of a bill of rights lay in "the legal check which it puts into the hands of the judiciary." As to the fear that some things might be left out of a bill of rights and thereby serve as justification for government's limiting such rights, it would be easy enough to add a provision stating that failure to mention particular rights was not to be construed as meaning those rights did not exist (this was, of course, precisely what was done with the Ninth Amendment). Finally, if America was so unlike England that a bill of rights was wholly inapplicable, then against whom were the eight states' that had bills of rights protecting themselves?

James Madison, listening to these arguments fly back and forth, recognized that the Framers had made something of a botch of the situation. Not only had they in all likelihood alienated some potential allies, they had also handed a live issue to the opposition. Indeed, almost all of the Anti-Federalists' power in the struggle against the Constitution was to come from public support on this one issue, even though for many Anti-federalists "rights" were hardly as important a matter as the many other ways in which the Constitution undermined their conception of republican government. "The single issue that united Anti-Federalists throughout the country was the lack of a bill of rights," concludes Levy.

Suddenly, the Federalists had to face the very real prospect of seeing ratification defeated, or stalled by states' conditional approvals pending the addition of a bill of rights. There were even some prospects of the Anti-federalists securing a second constitutional convention that would revise the proposed Constitution so as to reduce the national government's taxing and commerce powers.

Madison was the Federalist politician who saw these matters most clearly. Although he had upheld the Federalist position on the issue as late as Virginia's ratifying convention in June 1788, Madison recognized that his own state would probably have voted to defeat the Constitution unless a recommendation for amendments had been attached to ratification. More personally, Madison could see how his opposition to a bill of rights was undercutting his own political position at home. Patrick Henry, for example, had been able to prevent Madison from becoming one of Virginia's United States Senators, and soon even a seat in the U.S. House of Reprentatives began to look like less than a sure thing when James Monroe was picked to oppose Madison.

Running for the House in October 1788, Madison put himself squarely in favor of a bill of rights, thereby especially reassuring the Baptists in his district who worried about protection of religious liberty. While still expressing private doubts about the value of parchment barriers like bills of rights in the face of outbreaks of public hysteria, Madison was now publicly committed to the concept. He had made a pledge to his congressional district, and when he was elected by a narrow margin, he felt himself honor-bound to pursue the issue sincerely in the House of Representatives. This did not, it should be noted, stop Madison from describing his efforts, in the midst of the debate that ensued, as "the nauseous project of amendments."

By June 8, 1789, when Madison made his long memorable House speech in favor of amending the Constitution, he discovered that the political climate had changed in odd ways that altered all the political strategies surrounding the issue of a Bill of Rights. Madison now found himself operating in a political context where no one other than himself seemed really to want a Bill of Rights. On the one hand, and not surprisingly, there were the purist Federalists who insisted on adhering to the old party line and still could not discern the political costs involved in preventing amendments. This group now argued that the new government had much more important business to consider, such as tonnage duties and creation of a federal judiciary.

The major change in the political climate involved the shrewder of the Anti-federalists, who had rapidly come to the conclusion that the passage of a Bill of Rights would make the Constitution fully legitimate, and make it that much harder to revise it in areas that they considered even more important. Once a Bill of Rights was passed, there would be no hope at all for the second convention so many wanted, or even for amendments aimed at reducing the commerce and taxing powers of the federal government.

It is not often noted that after Madison's famous June 8th speech, every speaker who followed him either opposed a bill of rights outright, or at least urged postponement to a later time. But Madison, partly as a matter of personal honor and partly because he saw the political dangers of procrastination, refused to back down. North Carolina and Rhode Island were still outside the Union and large numbers of people within the Union were still not fully reconciled to it.

The first irony involving the Bill of Rights, therefore, is that it was put on Congress' agenda and ultimately passed largely through the efforts of a man not wholeheartedly committed to it. Indeed, it appears that Madison himself did not fully understand that he had created "A Bill of Rights," and that it had unique significance as an integral whole. Rather than appending the Bill of Rights as a unit at the end of the Constitution, Madison's preference had been to have its provisions "incorporated" in bits and pieces at appropriate places throughout the Constitution.

The second irony of the Bill of Rights is that it was the Federalists--as the dominant force in Congress--who ended up framing and passing on for ratification the set of amendments they had long derided. With the Anti-federalists often sitting on the sidelines, it was Madison and the Federalist majority in Congress that ended up deciding what would and would not be included in the Bill of Rights.

The final irony, of course, is that, in the end, it was the erstwhile Anti-federalists who wound up fighting to stall and sabotage the Bill of Rights. Belatedly, they regretted their strategy of stressing the need for a bill of rights, for they now saw that Federalist acquiescence on that one point would quickly deprive them of broad public support for other changes they deemed even more vital. Thus, it was in November 1789, that the amendments finally came before Virginia, so that the state where the call for a Bill of Rights had orginated now became the last state to act, and grudgingly at that.

The Anti-federalist senators, Lee and Grayson, reported the amendments to the state legislature "with grief," and Patrick Henry himself led the movement to postpone consideration. Only after two years of delay, recognizing that the fight for a second convention to undo the Constitution was hopelessly lost, did Virginia's Anti-federalists finally accept the Bill of Rights. The fight <u>for</u> a Bill of Rights had begun in Virginia in 1787, and ended there in 1791 only after a long fight <u>against</u> it. Thus did politics, from the outset, shape the struggle over what we today consider fundamental American liberties. Given a Bill of Rights born in politics, we should hardly be surprised to find it still embroiled in political conlict two centuries later.

VI. SAMPLE LESSON PLANS

THE DEBATE FOR RATIFICATION OF THE U.S CONSTITUTION IN THE STATE OF NEW YORK

A Study in Primary Source Documents That Utilizes the Federalist and Anti-Federalist Essays Published in the State of New York

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STATEMENT OF PURPOSE

This project consists of a series of lesson plans on the ratification debate in New York State utilizing primary source documents. Those documents consist primarily of excerpts from the essays published in the newspapers of New York City, both Federalist and Anti-Federalist, from September of 1787 to April of 1788. The Federalist Papers are widely available, and virtually complete collection of Anti-Federalist works can be found in Herbert Storing, ed. The Complete Anti-Federalist, 7 vols., Chicago: University of Chicago Press, 1981.

Given the difficult nature of the material, the project is geared toward above-average students: Honors and Advanced Placement. The activities are designed to address several areas of concern. First of all, the activities are an attempt to address the problem of teaching basic constitutional principles in an AP class. In New York State, 11th grade students in the AP American History course are also required to take the Regents Exam in American History and Government. The Regents Exam has a heavy emphasis on constitutional principles, but the AP curriculum leaves very little time to teach those principles. An in-depth study of the ratification debate affords the opportunity to teach aspects of the Constitution in an historical setting.

The second concern was my desire to present the arguments of the debate to the students as if the issue of ratification was before them. All of the essays (with the exception of Madison's) are by New Yorkers and published in the papers of New York. As thoughtful citizens of New York, the students will be asked to consider the various issues presented by both sides in this momentous debate and to form some kind of judgment on the question of ratification.

Finally, I am concerned that we as teachers have largely dismissed Anti-Federalist thought. There is a tendency to teach our students how the U.S. Constitution corrected the weaknesses of the Articles of Confederation without giving due consideration to the potential problems of the new constitiution. I want my students to realize that the Anti-Federalists presented some very valid criticisms and concerns and that we should not simply accept the Constitution as gospel.

OBJECTIVES

After completing a careful examination of the documents, students should be able to:

1) gain an understanding of some basic constitutional principles by examining the major arguments presented by the Federalists and the Anti-Federalists

2) gain a greater awareness of Anti-Federalist thought

3) identify the major Federalist arguments as presented by the Federalist Papers

4) employ skills necessary for the utilization of primary source materials and to gain insight into a major historical decision

5) identify strains of Federalist and Anti-Federalist thought in contemporary American politics

6) develop cooperative learning skills through group research and discussion

7) present the major arguments in a classroom debate format

MATERIALS

The number of essays published by both sides during the debate is extensive. There are 85 essays that comprise The Federalist and over 160 essays were published by the Anti-Federalists. My task, obviously, was to impose limits on the number of essays used in this study and to carefully edit those that were included. I fully realize the difficulty high school students have with the Federalist Papers in particular. Therefore, the study does not require the students to read the essays in their entirety but to focus on selected passages that highlight the issues. Hopefully, with careful editing and the inclusion of study guide questions, students will be able to understand the material. For the sake of brevity, I selected what I consier to be five key issues in the debate. The excerpts taken from the literature will focus on these five issues. The selected issues are also broad enough to allow the teacher to incorporate a host of related issues while emphasizing constitutional principles. The study also incloudes a set of additional documents that will also shed some light on the nature of the ratification debate in New York.

DOCUMENTATION

ISSUE	FEDERALIST	ANTI-FEDERALIST
1. Status of the Articles of Confederation Points to Consider How critical was the Critical Period?	Hamilton #15	Melancton Smith- "A Letter From a Plebian"
2. Sovereignty and the Federal/State Relationship Points to Consider -delegated and reserved powers -encroachment by the Fed. govt. -balance of power -commerce clause/taxation power -separation of powers -supremacy clause	Madison #46, #47, #51	Dewitt Clinton- "A Countryman #4
3. Executive Points to Consider -argument for/against a single executive -term of office/re-election -war powers clause -foreign policy role	Hamilton #70	Robert Yates or George Clinton- "Cato" #4
4. Representation Points to Consider -size of Congress- adequate? -proper function of representative -democracy vs. aristocracy	Madison #56, #57, #62	Robert Yates- "Brutus #3
5. Bill of Rights Points to Consider -state bills of rights -amendment procedure	Hamilton #84	Robert Yates- "Brutus" #2

ADDITIONAL DOCUMENTS

1. Letter from Gouverneur Morris to George Washington dated October 1787. Content- the outlook for ratification in New York.

2. Letter from John Lansing and Robert Yates to Governor George Clinton dated October 1787. Content- explanation as to why the two delegates left the Philadelphia Convention.

3. John Jay's Address to the people of New York. Content- thoughts on ratification.

4. Governor Clinton's Circular Letter to the governors of the other states. Content- New York's request to push for a second Constitutional Convention.

5. The New York Instrument of Ratification.

6. List of delegates attending the New York State Ratifying Convention.

7. Map of New York at the time of the Poughkeepsie Convention.

BACKGROUND ACTIVITIES

The following is a list of suggested activities that should be completed prior to document study.

1. New York at the time of the ratification debate--a presentation that would include information on population distribution, major political concerns including border disputes, eocnomic strengths and problems.

2. A brief research assignment on the leading Federalists and Anti-Federalists in New York State. Have students select one or several leaders in the debate and provide a brief biographical sketch. Dictionary of American Biography would be one possible source.

3. Utilizing the map and the list of delegates, have students identify Federalist and Anti-Federalist strongholds.

4. Worksheets on basic constitutional principles. Students should have an introduction to the structure and content of the Constitution prior to document study.

PROCEDURE

The project offers three basic approaches to the study of the documents. Depending on the needs of the students, time limitations and teaching style, teachers can select the format that is most appropriate to their situation.

1. Debate Format

   a. Divide the class into Federalist and Anti-Federalists based on the ratio of Federalists to Anti-Federalists at the Poughkeepsie Convention or simply divide the class in half to put the opposing groups on an equal basis.

   b. Review with the entire class excerpts from the Lansing and Yates letter as well as Jay's Address to the people of New York.

   c. Each side should then break into five committees--each committee should be assigned the documents pertaining to one issue.

   d. On the second day one person from each committee will make a brief persuasive speech based on the assigned document. The opposition will then have the opportunity to rebut. The issue will then be open to the floor for additional comments, alternate sides on each successive issue.

   e. Have students vote on the issue of ratification based on their understanding of the issues and the strength of opposing arguments presented during the debate.

   f. Review with the entire class Clinton's Circular Letter and New York's Instrument of Ratification.

2. Group Format

   a. Divide the class into five groups by issue. Complete Step b from Debate Format.

   b. Distribute documents on both sides of that issue to each group member.

   c. Have students examine the documents, answer study guide questions and review appropriate clauses in the Constitution.

   d. General group discussion.

   e. Group presentation of findings.

   f. General class discussion.

   g. After each group presentation, complete Step f of Debate Format.

3. Class Format

   a. Assign one or several documents to each member of the class. Document study can be completed in class or for homework.

   b. Have students present brief summaries of their findings by issue.

   c. General class discussion on the content of each presentation.

QUESTIONS FOR DISCUSSION

These questions can be worked into a general class discussion during the document study or used as a follow-up after a study of the documents has been completed.

1. Was the Critical Period all that critical?

2. What arguments suggest that the Constitution of the U.S. did not create a democratic government? How do you account for this?

3. Why, ultimately, did New York ratify the Constitution?

4. Place yourself in the position of the Anti-Federalists. What provisions of the Constitution disturb you most?

5. Can you identify any strains of Anti-Federalist thought in American politics today? Federalist thought?

6. What judgments does each side make about the nature of men?

7. Have any of the fears of the Anti-Federalists been realized today?

8. Speculate on the course of events if New York had failed to ratify the Constitution.

FOLLOW-UP

1. Film--Empire of Reason. The film takes two class periods to complete. If you allow three days for document study, the entire project can be completed in one week.

2. Written Evaluation- Document Based Question Essay

> "In this Constitution, sir, we have departed widely from the principles and political faith of '76, when the spirit of liberty ran high, and danger put a curb on ambition. Here we find no security for the rights of individuals, no security for the existence of our state governments; here is no bill of rights, no proper restriction of power; our lives, our property, and our consciences, are left wholly at the mercy of the legislature. . . . "

Based on the documents and your knowledge of the period, evaluate this statement.

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FACTIONS AND PARTIES IN AMERICAN POLITICS

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AIM

What role do "factions" play in our political system?

MOTIVATION

The following three quotes should be placed on the blackboard:

1. "We should worry about the infinite mutual abuse of parties, tearing to pieces the best of characters."
   -Benjamin Franklin

2. "We must be warned against the baneful effects of the Spirit of Party."
   -George Washington

3. "If I could not go to heaven but with a party, I would not go there at all."
   -Thomas Jefferson

Students would then be asked the following questions:

1. How would you describe the attitudes of these three men toward political parties?

2. Why do you think they believed the way they did? (Discussion should lead to the fact that political parties represent differing interest groups or factions which should lead to the aim.)

OUTLINE

Students are to receive a copy of Madison's Federalist #10.

A. Do you think it is harmful, in our political system, to have the population divided into various interest groups or factions?

B. After reading Madison's introduction, how do you think Madison would answer the question of whether political parties or interest groups or factions are dangerous in our political system?

C. How does Madison define the term "faction?" What would be good examples of present-day factions?

D. If we all agree with Madison that factions will disregard the public good for their own interests, how do we then protect the public good?

E. What are two methods that Madison suggests for "curing the mischiefs of faction?" Which one does he favor?

F. Madison said that "the protection of these faculties is the first object of government." To do this, does Madison favor a democracy?

G. Why did Madison believe that a republican form of government is best able to protect the people against the effects of factions?

Summary: Therefore, what role are factions supposed to play in our republican form of government?

AIM

Have political parties represented factions and interest groups?

MOTIVATION

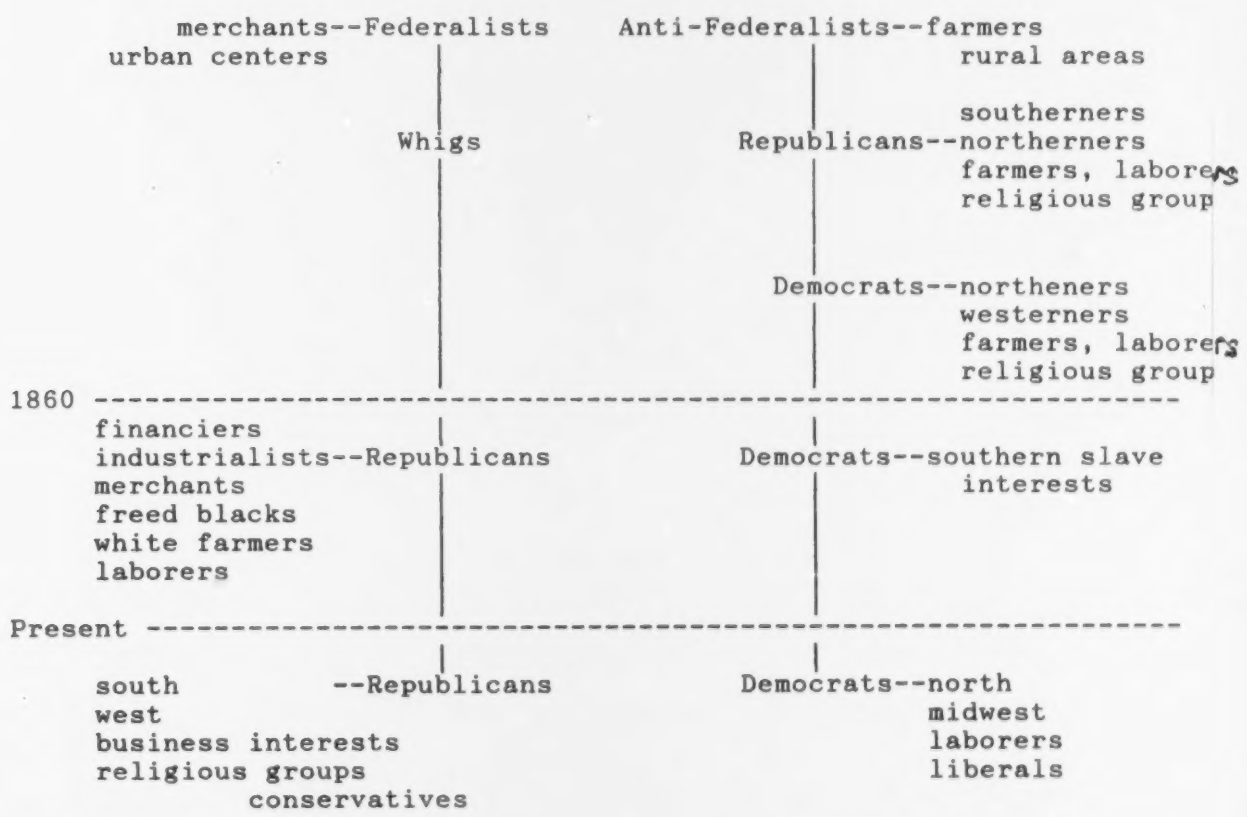
1. What was the reason that James Madison gave for his distrust of democracy?

2. Do factions play a role in our political system? How do they? (Student responses should lead to political parties and thus the aim).

OUTLINE

A. What is it that we are referring to when we use the term "political party?"

B. How can we prove that political parties have represented coalitions among various factions in American history?



C. How would we measure the success of a particular political party?

Summary: Therefore, what appears to be a function of political parties in our political system?

CASE STUDY: THE ELECTION OF 1800

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GOALS (Knowledge Objectives)

Upon completion of this study, students will understand facts and events related to the Election of 1800. They will develop and improve skills related to the syllabus for 11th Grade U.S. History and Government.

SKILLS

Differentiating fact from opinion; the ability to make comparisons and contrasts between and among related events and ideas; critical thinking (ability to analyze various points of view); written and oral expression.

MATERIALS

Primary and secondary source material related to the Election of 1800 (election results, comments by participants, documents, political cartoons, maps, etc.).

PROCEDURE

Prior to Day 1: Students should have completed Unit 1 in the U.S. History and Government syllabus up to "Implementing the New Constitutional Principles."

Day 1: Offer students the following quotation and ask them to fill in the two blanks with what they believe are the correct names:

_____ is "the most unfit man in the United States for the office of President. (said by _____)

Discussion related to "wrong" answers is certainly useful and appropriate. I have found that one or more of my students will often get at least one of the names correct after no more than two or three hints (if not sooner). Mention of "a famous duel" will almost certainly gain the correct response of Aaron Burr (as the "unfit man") and Alexander Hamilton.

A listing and discussion of the elements and results of the rivalry between Hamilton and Burr will capture the attention of the students and provide unique insight into the Election of 1800. (A handout titled "Election of 1800" should provide many facts related to the background, campaign, and results of the Election of 1800 and the Hamilton-Burr duel.)

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Following the discussions related to the quotation and the Hamilton-Burr rivalry, inform the students of the nature of their work for the next two or three days, which will be to create a "special edition" newspaper related to the results of the Election of 1800.

For homework, have students list all the elements of a newspaper which would be appropriate for this case study. (An additional or separate assignment could be to list important events and issues related to the election based on material in students' history texts.) A very useful visual aid would be to show students a copy of the New York Post, which was founded by Hamilton and which bears a copy of a portrait of Hamilton on the tabloid's first page.

Day 2: Review homework. List elements of a newspaper on chalkboard. List important events and issues related to the Election of 1800 on chalkboard. You may wish to assign students their tasks as reporters/journalists/commentators, etc. or ask students to volunteer for the type of assignment they wish to do related to the making of the newspaper. (If students have seen the film "An Empire of Reason: New York State's Ratification of the Constitution," prepared by the NYS Bar Association, they can mor easily and eagerly understand how the events related to the Election of 1800 can be presented as if they happened today.

Below are listed both elements of a newspaper that may be useful in this project and events and issues related to the election.

Elements of a Newspaper

- news-related articles (summary of event, profile of candidates, graphics related to election results, interviews, campaign issues, etc.) International, national and local interest can be emphasized
- weather page (for Feb. 17, 1801--the day after the House declared Jefferson the winner)
- editorial page, commentaries, letter to the editor
- other elements of a newspaper can be included in project for a more creative end result

Events/Issues Related to Election of 1800

Adams Administration
Emergence of Political Parties
Election of 1800: Revolution or a "Changing of the Guard"?
Profiles/Biographies of Adams, Jefferson, Burr, Pinkney, Jay, Hamilton
The Electoral College: Reform (12th Amendment) or Abolition?
Comparison of Federalist and Republican Parties
Alien and Sedition Acts
XYZ Affair
Neutrality and National Security
Economic Pressures as a Tool of Diplomacy
Kentucky and Virginia Resolutions
Impact of Rise of Napoleon on America
"Whispering Campaigns" (morals attacks on Jefferson)
Decline of the Federalist Party

As time permits during this class period, the following may be done: read textbook (or other source) material related to election and/or have students begin specific assignments.

For homework, students may be told to complete assignments (they will need to take primary and secondary source materials home).

Day 3: Students should complete final drafts of work to be collected. The classroom teacher will certainly be busy in the role of "editor."

Day 4: Discuss the events and issues related to the Election of 1800. Students should be well-informed about events to discuss important issues and concepts in detail. On-going debates and enduring issues should be highlighted. The following "Enduring Issues" should be stressed: National Power--Limits and Potentials, Civil Liberties--the Balance Between Government and the Individual, Presidential Power in Wartime and Foreign Affairs, Constitutional Change and Flexibility, Avenues of Representation. Other enduring issues can be discussed.

EVALUATION

A unit exam or a summary-question assignment may be given.

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BIBLIOGRAPHIES

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VIII. APPENDICES

A-1

The *E Pluribus Unum* Simulation: Recreating the Philadelphia Convention and Ratification Struggle, 1787-1788

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Students too frequently see the Constitution as a finished product. While they will grudgingly memorize specific details and the main compromises, they perceive the event as ineluctably producing this Constitution and unavoidably accomplishing its ratification. The story lacks drama and carries such a feeling of inevitability that they miss the importance of the decisions made in Philadelphia and in the ratifying conventions of the states.

Faced with the choices made in 1787, students tend to replicate what they can remember of the actual Constitution, with the exception that most will want popular election of the President and will add possible offenses for impeachment. Those taking roles as northerners will promote the three-fifths compromise over not counting slaves in apportioning representation because they associate that formula with the Convention. In the plan's principle features, their vision coincides with that of the Founders. This, then, can become for them a mindless activity divorced from individual reality or one in which they find themselves shackled to the past, unable to think imaginatively about it. Hindsight obscures the Founders' indecision and the very real problems they faced in overcoming difficulties presented by recent events and conflicting interests and opinions.

When asked to explain themselves, students will say they were influenced by the fact the Constitution has worked so well. Obviously, the Founders had no such assurance and were operating from no well-established plan as a model. Indeed, in the British colonial system and the Articles of Confederation, they had two less-than-perfect examples, and, in the British mixed-and-balanced constitution, an example they dare not copy too closely lest it fail of ratification. But it is hard to argue with such a glorious success. The system works quite well despite the strains and tears of the past two centuries. But to truly understand it, students must hold this knowledge in abeyance.

Or, it may be that students will assert that they do not have the experience or intellect of the Founders. (That they lack the intense education the Founders had all recently received in the art and science of government is true.) Constitutional disputes and constitution-making had preoccupied Americans from 1763 to 1787, and few who participated in political society had not given time to ponder relationships and powers, as well as their own self-interest. Yet, even today's 18-year-olds have had experiences upon which to draw, have ambitions, and represent interests that could influence their choices. Then, too, they should remember the words of Jonathan Dayton of New Jersey who, at twenty-six, was the youngest delegate in Philadelphia:

"I feel about me on this occasion all that diffidence with which the consciousness of my youth and inexperience as well as inability to discharge so important a trust, cannot but impress me. The honor which must naturally attend my being associated with such very respectable characters as colleagues; the improvement to be derived from hearing the sentiments and communications of so learned an Assembly, were, I confess[,] the motives which influenced me, perhaps too powerfully, to accept the appointment." (Dayton, 1787)

Others attended and spoke but little, perhaps preferring the gentlemanly politics of the dining table or tavern to the rough-and-tumble of debate. Students should take comfort that even those who attended may have felt trepidations similar to those they feel today.

Too many of the students who appear in my classes, particularly those in general-education survey courses, have had little practice in making reasoned decisions and avoid the opportunity as frequently as possible. In this they are abetted by textbooks which, as Frances FitzGerald reported in *America Revised*, focus on larger forces and, too often, divorce individuals from responsibility for what happens. (FitzGerald, 1979)

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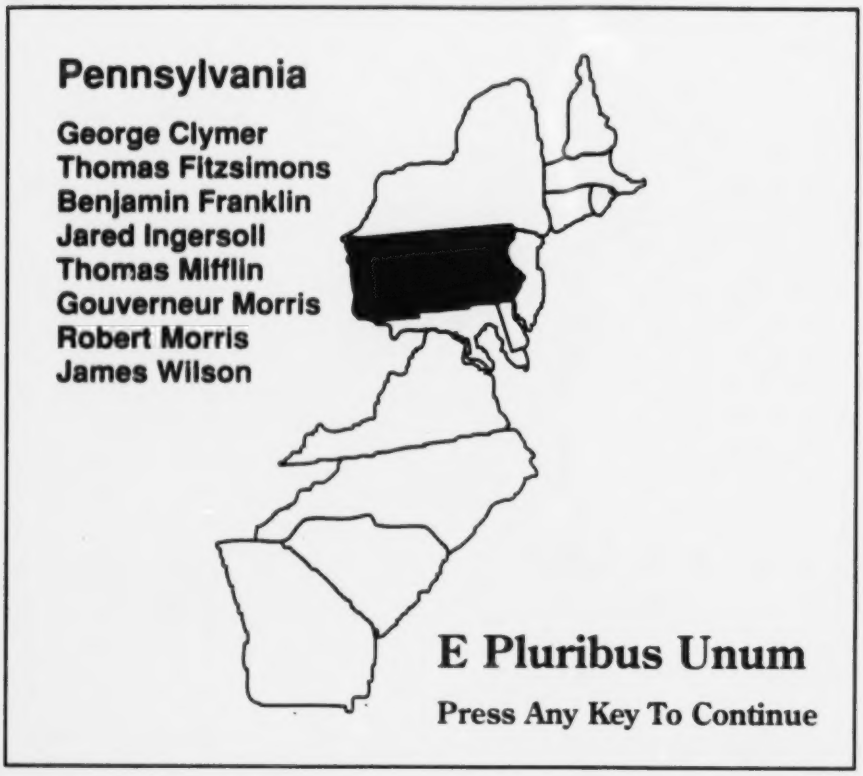

Figure 1: Students begin Convention deliberations with a state-by-state review of the actual delegates and their constituencies.

When today's textbooks discuss the past, the individuals who populate the story seldom seem to make choices, a circumstance not in accord with historical reality and a particularly lamentable deficiency in view of students' willingness to escape responsibility for the outcome by not taking a stand in the first place. (Schick, 1988)

If students are to understand the Philadelphia Convention and, hence, the Constitution of the United States, they need to have this sense of drama restored and have the sense of the inevitability of historical events short-circuited. They must acquire the means by which to interpret actions and make difficult choices. Students learn best by taking an active part in their own education. Computer simulations are preferable to boardgame simulations of the Philadelphia Convention because they are more immediately involving, can quickly and unobtrusively perform analytical operations invoked at a keystroke, respond and branch in complex ways in response to the users' actions, and internalize the rules and charts which clutter and often stifle conventional recreations of historical events. Role-playing simulations where students act as historical characters, though a method promising greater insight, seldom fulfill their potential because they depend so much on outside research and rhetorical skills. A computer simulation which focuses on the political philosophy and self-interested motives of individual delegates, but does not require detailed knowledge for its success or failure if students engage in desultory discussion of the issues, would appear an ideal way of teaching about the Constitution's creation.

Currently available computer simulations dealing with the Constitution are intended for precollege students. (See note on *To Preserve, Protect, and Defend* in the Resources section.) These often include nonhistorical characters or activities, seldom treat constitutional developments prior to 1787, allow only a limited number of choices, inadequately present the delegates' philosophy and interests, and fail to consider ratification as anything but a foregone conclusion. None of them affords students the opportunity of analyzing the Constitution or of relating what went on in Philadelphia to subsequent events.

For these reasons and to meet the challenge outlined above, I devised a multipart computer simulation of the Philadelphia Convention and the ratification process. There are eight programs which comprise the *E Pluribus Unum* simulation.

(Continued on page 44)

The challenge of teaching about the formation of the Constitution:

to restore the drama, a sense of the event unfolding conveyed by a reading of James Madison's *Notes of Debates*;

to emphasize that while the Founders evidenced consensus on the main features of a new system of government, they had no blueprint which guided their efforts, nor were they agreed upon the means of carrying out those general principles;

to stress the crucial nature of the Convention's give and take, the role not only of the major compromises between small states and large and among delegates representing northern and southern interests, but also the trade-offs over matters minor and significant which shaped the final document;

to articulate clearly the three-dimensional nature of the Constitution's equilibrium, the delicate balance of interests and philosophical considerations that for each delegate constituted the ideal;

to instill a proper respect for the Founders' accomplishment as well as an appreciation for the nation's willingness to risk its future, to dare to succeed spectacularly, not merely survive, with an untried, and in many ways unprecedented, form of government; and

to come away from the experience with the ability to interpret the Founders' plan and use that insight to understand political developments in the decades which lay ahead.

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E Pluribus Unum
(Continued from page 17)

First, in "Bound for Philadelphia" the participant finds a member of the Philadelphia Convention to represent. After asking for information on the player's own political philosophy and special interests, the program will sort through the Founders and report the names of those whose views come nearest the player's own. This provides a first, brief introduction to the "issue/interest" factors which will become a key part of the simulation itself and to the fashioning of a political philosophy and interest cluster relevant to the late 18th century.

For example, the student will be asked how much democratic, aristocratic, and monarchial influence should prevail in the proposed government and the degree to which a new constitution should favor the interests of the large and small states. Possible responses are calibrated in categories the Founders would have understood: weak, weak-to-middling, middling, middling-to-firm, or firm.

Second, after choosing a delegate to portray, the player investigates the "Worldview of the Founders" to gain insight about the context in which his or her delegate perceived events. By answering biographical questions about the individual whom the player will emulate — an actual or imagined person — the student will build up a picture of that delegate and learn about the way that delegate related to the world outside. This first-person activity is intended to draw the student into the period of the 1780s and, at the same time, provide a tutorial on the factors which tended to produce a cosmopolitan or a localist point of view.

The student responds to queries about the delegate's military service during the War for Independence, his education, church affiliation, and ownership of slaves, among other topics.

Third, to learn how to make informed decisions in the Convention, the player reviews "Making Constitutional Choices." This program highlights the fourteen "issue/interest" areas and explains how each shaped choices in Philadelphia. The fourteen "issue/interest" areas are grouped in six categories: political philosophy (democratic, aristocratic, or monarchic influences in the system), apportionment of federal authority (relative power of the states and the central government), state size considerations (divergent interests of large and small states), sectional balance (differing agendas of the North and South), balance of power (distribution of authority among the legislative, executive, and judicial branches), and balance of power in Congress (comparative strength of the two houses). This exercise gives students the basic tools needed to differentiate between alternatives and interpret the finished Constitution. The teacher's manual provides further explanation of these topics, including quotations from Convention debates which reveal the role each played in shaping the Constitution.

The student tells whether a single term or unlimited reeligibility to office would make a stronger executive institution and decides if equal representation in the upper house would favor the large or the small states. Other questions highlight each of the "issue/interest" factors.

The core of *E Pluribus Unum* is the fourth program, "Philadelphia Convention," which asks the student to make selections from among a number of alternatives for thirty-one different constitutional issues. All were debated in Philadelphia in 1787, and all the options, though restated in modern English and presented in an organized format, were brought before the Convention. Having evaluated the choices for their positive impact upon the "issue/interest" parameters, this activity concludes with qualitative and quantitative analysis of the player's constitution and compares it to the plan actually adopted in 1787.

The choice of three, four, six, seven, eight, and twenty years for the term of the President and whether or not to give Congress the power to veto state laws are two of the questions. Depending on the student's philosophy and interests (for instance, a delegate might want more monarchial influence in the government, but wish to preserve as much power for the states as possible within a federal system), the student will have a range of appropriate choices. With the "issue/interest" factors in mind, the student has criteria for making an informed selection based on those held by the Founders. The student can then compare his or her "issue/interest" goals with the plan developed by the class.

Fifth, the "Style" program displays the player's constitution organized into articles corresponding to those of the actual Constitution. This format enables the player to make a direct comparison of the two plans.

Since "Convention" presented choices in terms of structure, powers, checks and balances, and ratification, the student will now see his or her decisions shown in the more familiar arrangement of the Constitution.

Sixth, to facilitate interpretation of the player's constitution, "Electronic Discussion Leader" presents questions keyed to the "issue/interest" factors. These interrogatives are context-sensitive: they relate to the specific decisions the student made in creating a frame of government. Most of the questions ask the player to explain choices made or consider their consequences. These questions could also form the basis of class discussion or individual reports.

For example, should the student opt for a two-thirds vote on acts to regulate trade, he or she will be asked to explain why a pro-South position was taken on this issue. If the student selects charges for impeachment of the chief executive in addition to treason, bribery, and other high crimes and misdemeanors, he or she will be called upon to give reasons for broadening the scope of possible misconduct.

Seventh, the player encounters "The Sun Rising," a two-part program on ratification. The first part, "Federalists and Antifederalists," introduces post-Convention political divisions and sets the stage for public consideration of the constitution developed in the simulation. The participant answers questions about positions taken by the two sides and about their strengths and strategy in the ratification contest. This brief tutorial on ratification attempts to create a context in which the student can understand not only his or her own constitution but also the actual 1787 document. Doing well on this part will help, and answering incorrectly will hinder, ratification of the player's constitution. For this reason the program does not provide the correct responses on screen, though the accompanying teacher's manual does contain the answers.

The student identifies which of the two competing camps initially pressed for early decisions on ratification and which enjoyed more success in the seaboard and interior sections of the states. Other questions call upon the student to take the role of Federalist or Antifederalist in selecting the appropriate response.

Eighth, in "Ratification," the second part of "The Sun Rising," the student chooses one of three different scenarios influencing members of the state ratifying conventions and finds out whether or not his proposed constitution receives the support of a sufficient number of states to put it into effect. The computer compares "issue/interest" factors identified for each state with that of the proposed constitution, checks the current momentum for or against ratification, factors in the relevant scenario, and determines the state's vote on the constitution. Possible outcomes are rejection, outright approval, or approval with recommended amendments. Then, along with a qualitative state-by-state evaluation of the proposed constitution on the "issue/interest" factors, the computer displays a map

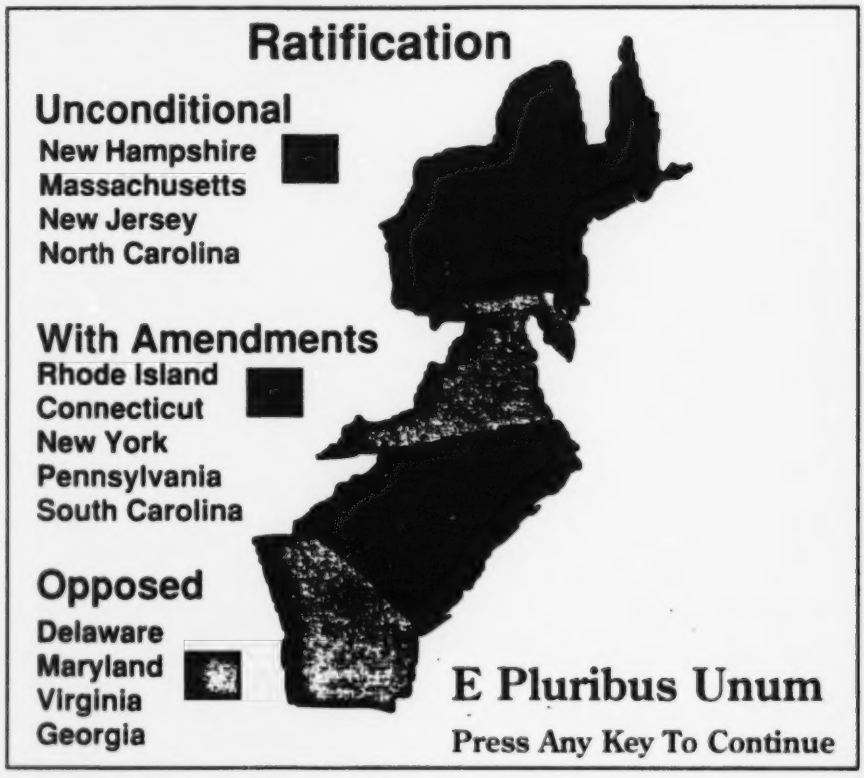

Figure 2: A student-created consitution meets its fate: its adoption failed because the class stipulated unanimous consent was necessary for approval.

of ratification and either congratulates the player on a successful campaign or notifies him or her that the Articles of Confederation remain in effect.

Of the three different scenarios, the student chooses either the historical scenario, which corresponds with the actual situation in 1787-1788, the pro-Federalist scenario to increase Federalist strength in up to three specific states or generally in all thirteen, or the pro-Antifederalist scenario with similar augmentation overall or in one, two, or three designated states. Then the result of deliberations in each state's ratifying convention will appear in roughly the same order as that which took place in 1787-1788. (States have the option to postpone their decision, as New Hampshire, North Carolina, and Rhode Island actually did.)

Having been exposed to these matters of philosophy and self-interest, students acquire a frame of reference for considering Hamilton's financial plans and the reaction they engendered, the Whiskey Rebellion, differing views on the War of 1812, the Hartford Convention, and politicians of the early republic. Furthermore, they have an understanding that individuals are not one-dimensional; a Virginian may represent his section, but he may also reflect large-state interests, favor aristocracy, believe in a strong national executive institution, and still defend state powers against inroads by the central government. Finally, they have been asked to make choices, some of the same ones made in 1787, and they can be called upon to imagine how the nation would have fared had their constitution replaced the one actually written. (See note on other uses in the Resource section.)

Because the *E Pluribus Unum* simulation restores some of the drama and

opens up Convention deliberations to choices informed by philosophy and self-interest as they were understood in the 18th century, it affords teachers an opportunity to meet the challenges discussed earlier and to involve today's students in one of the most significant events of the nation's history. The simulation, then, is a tool which in students' hands can transport them into another time and place and engage their imaginations and their minds. By discussing similarities and differences in their actions and those of the delegates actually in Philadelphia, students can come to a better appreciation of what actually happened and why, which is, after all, the bottom line in teaching about this historical development.

Many historians, if they have considered them at all, think of simulations either as entertainment, fun and games having little to do with education, or worse, as vehicles for teaching falsehoods. Recent examples, such as those of Professors John E. Semonche of the University of North Carolina and Carolyn Chappell Lougee of Stanford University, should suggest rather that enjoying the past is not contrary to pedagogical success and that what-if exercises lead students toward historical reality, not away from it. Seriousness of purpose does not demand a dispirited style of teaching, and imparting the historical record does not require that the teacher always assume the role of Dragnet's Joe Friday who wanted "just the facts, Ma'am." An imaginative reconstruction of the past embraces many different teaching methods, and a well-constructed historical simulation has a place as one of them.

So far, student reaction to *E Pluribus Unum* has been generally enthusiastic. Those who take the time to understand "issue/interest" factors derive the greater benefit from the experience, but most acknowledge the importance of the direct response to their actions in the "Electronic Discussion Leader" and "Ratification." Marginal students, those who will pay attention only if the subject interests them, and those who have both rigid and quite limited standards for acceptability, frequently enjoy decision making but often need convincing to adopt the Framers' perspective as relevant to the learning involved. Finally, the poorest students, though their resistance has been toughened over the years, will go through the motions; sometimes questions about the superiority of the class's plan over the actual Constitution or the consequences of alternative provisions will draw them out, as will the ratification process: many otherwise blasé students find themselves heartened by a positive decision on their constitution or are quick to criticize features of a failed plan.

E Pluribus Unum is no panacea. It does have features that can appeal to good students and to those with insufficient backgrounds, interests, imaginations, or a combination of these elements. None leaves the experience, however, with the same attitude toward the Founders' accomplishment: they now understand it to have been the product of compromises, to have emerged piecemeal from Convention deliberations and men's minds and experience, to have faced an uncertain fate in the state ratifying conventions, and to have brought the new nation to a future ripe with possibilities but uncertain and open to the actions of future generations. Finally, they now know the Constitution rested upon "issue/interest" considerations which preceded the Philadelphia gathering and continued into the early years of the Republic. For me, that represents an important educational achievement, one my lectures told them about but which remained an untried, unimagined actuality in the minds of most of my students.

Reconstructing the past as it actually happened challenges historians-as-writers to document their facts and account for their conclusions, discover new evidence where extant sources have not survived or contemporaries failed to keep records, analyze the development and meaning of events, and understand the motives of historical agents and communities, all the while invoking the story of the past in vivid prose. Historians-as-teachers must not only achieve these goals, but must also engage the active minds of their students, place them at ground-zero, open their eyes to what is actually happening, and provoke them to wish to do this for themselves.

Because the computer combines so many functions and switches among them with relative ease, it offers historians the opportunity to fulfill both these roles more effectively. (Schick, 1990) Computer simulations, such as the one described above, facilitate several of the historians' necessary responsibilities. In such an activity, history teachers have a way of creating a three-dimensional case study open to documentation, analysis, and interpretation. Today's computer recreations will pale before those possible in the near future as significant increases in memory capacity and sophistication in imagery combine to reach a closer approximation of reality. Then, used with insight and care for relevance and accuracy, historians may have acquired a new means of communicating the past, one which takes its place alongside the article and monograph. The crucial difference between such computer recreations and works by fiction writers, filmmakers, and television dramatists is that historians will control all aspects of the presentation. To do so, however, requires a commitment to mastering this new educational technology.

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(See Resources, page 58)

SQUALOR

CONTACTS

SQUALOR is available from:

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P.O. Box 960
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E Pluribus Unum

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E Pluribus Unum is currently available for a donation of $10 to:

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To Preserve, Protect and Defend is available from:

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Creating the U.S. Constitution is available from:

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The U.S. Constitution: Nationalism and Federalism is available from:

Focus Media Inc.
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800-645-8989 or (516) 794-8900

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To Preserve, Protect, and Defend (Minnesota Educational Computing Corporation) introduces individuals who were not at the Philadelphia Convention (John Adams, Thomas Jefferson, and Patrick Henry, among others) and builds the activity around a fictional attempt by certain parties to "destroy" the agreed-upon Constitution before its promulgation. *Creating the U.S. Constitution* (Educational Activities, Inc.) assigns students one of six fictional individuals (Caleb Gerry and Dr. John Yates, for example) and challenges them to answer questions from the viewpoint of one of those delegates. Providing not only a decent tutorial on basic features of the Constitution, but also a consideration on one delegate's view of the system, this too-short program errs in over-emphasizing class conflict and failing to develop the clash between northern and southern delegates which played a significant role in shaping the Constitution. *The U.S. Constitution: Nationalism and Federalism* (Focus Media) combines an interactive tutorial on sovereignty during the two decades prior to 1787 and on views of the Articles of Confederation with a very brief section allowing students to create a constitution (choose the five purposes of government; select the titles of one or two legislative houses, the chief executive, and the national judiciary; and pick five powers of government); selections from the actual debate on two issues (representation and electing the President); a debate between Alexander Hamilton and Thomas Jefferson (who was actually out of the country in France at the time) on the Constitution's merits; instruction on key terms; reaction questions on subsequent constitutional developments and the amendment process; and a quiz-show game on the Articles and Constitution. Imaginative and comparatively thorough, the choices fail to illuminate the Constitution and, like the rest, the program does not treat ratification as the crucial test it was.

The Boxscore

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For the Classroom

What Every Student Should Know About the Bill of Rights

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In June of 1789, Representative James Madison fulfilled a campaign promise to his Virginia constituents by asking colleagues in the House of Representatives to consider a group of constitutional amendments designed to secure basic individual liberties. By December of 1791, ten of these were ratified by the necessary number of states, becoming the first amendments to the new Constitution—the U.S. Bill of Rights.[1] Despite the bicentennial "burnout" which some individuals are experiencing, the bicentennial of the Bill of Rights—which we begin in earnest this spring—should be a most meaningful occasion for every American. The Declaration of Independence made the nation a possibility; the Constitution created the structure of public authority in the nation; but the Bill of Rights has done nothing less than define the very quality of public and private life in the United States. If the Constitution is a "living document," then surely the Bill of Rights is *about* daily living and the freedom we have to experience life. This makes the Bill of Rights America's most important "founding" document.

The Bill of Rights has been variously described as "a shield to every American citizen," "the one guarantee of freedom to the American people," "fetters against doing evil which no honest government should decline," and "the foundation of liberty against the encroachments of government." However, even as we prepare to celebrate its bicentennial, ignorance, indifference, intolerance, ideology, and perhaps even modernity threaten the viability of its guarantees. Historian Michael Kammen (1986: 336-356) calls it a "subtle attack" while others see it as a direct frontal assault. For the past forty years, surveys have shown that Americans are uninformed about the provisions contained within the Bill of Rights, at best; and hostile to them, at worst. Of greater concern is the "gray truth," as attorney Marvin E. Frankel (1986: 9) puts it, that "civil liberties and civil rights are not very popular in the land of the free."

The popularity of the Reagan-Meese attack on the applicability of the Bill of Rights is but one recent exemplification of this argument (see Doerr 1985; *The Progressive* 1985; Schwartz 1985; and Macedo 1986). During the 1980s, as Archibald Cox (1987: 342) explains, "The President and Attorney General Meese lambaste[d] the Court for disregarding the intent of the Framers of the Constitution in order to impose on the country what they charge are social experiments flowing from the Justices' personal values." In particular, Attorney General Meese strongly advocated a reversal in the doctrine of "selective incorporation" which applied the Bill of Rights to state and local authorities through provisions of the 14th Amendment.[2]

The complexity of problems we face as a post-industrial society makes the application of the Bill of Rights a difficult, but not an impossible task. We may begin a defense against these modern assaults by identifying seven items that every student (and every American for that matter) should know about the Bill of Rights.

[1] *The Framers of the Constitution orginally opposed the Bill of Rights.* Ironically, James Madison and most other delegates to the Constitutional Convention in 1787 opposed a proposal to establish a bill of rights and continued to oppose it during subsequent ratification debates (see Farrand 1911, V. II and Rutland 1983). Late in the Convention, on September 12, George Mason introduced a motion to preface the proposed Constitution with a Bill of Rights. While the convention voted unanimously against the proposal (see Farrand 1913, 186), four primary arguments were advanced to sustain opposition to a bill of rights by the Federalists. (1) It was unnecessary in a constitutional republic founded upon popular sovereignty and inalienable natural rights. In addition, since many (but not all) states had bills of rights, federal guarantees were not needed. (2) A bill of rights would be dangerous for, as Alexander Hamilton (see Rossiter 1961, 513) put it in *Federalist, #84*: "They would contain various exceptions to powers which are not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. Why declare that things shall not be done which there is no power to do?" (3) It would be impracticable to enforce since its security would inevitably depend on public opinion and on the general spirit of the people and of the government. (4) The Constitution is itself a bill of rights as is the constitution of each state making further efforts to secure these rights redundant.[3]

[2] *The Bill of Rights is the result of political pressure and compromise.* The absence of a bill of rights in the Constitution was a major obstacle to ratification and provoked some of the strongest protests by the Anti-Federalists in opposition to the proposed government. George Mason of Virginia refused to sign the Constitution, saying that without a bill of rights he "would sooner chop off his right hand than put it to the Constitution as it now stands."[4] Agrippa responded to the Federalists' defense of the Constitution by insisting that in a representative government a bill of rights was absolutely necessary "to secure the minority against the usurpation and tyranny of the majority." A [Maryland] framer was even more emphatic: "The truth is, that the rights of individuals are frequently opposed to the apparent interests of the majority—For this reason the greater the portion of political freedom in a form of government the greater the necessity of a bill of rights."[5] Indeed, for Brutus (see Storing 1985,119), it was "astonishing, that this grand security, to the rights of the people, is not to be found in this constitution."

Since the Federalists were not completely convinced of the undesirability of a bill of rights as to prefer the defeat of the Constitution to ratification with an accompanying bill of rights, they agreed to support a bill of rights once the First Congress was assembled.

Madison's change of mind on this matter is attributable to the anti-federalist composition of his congressional constituency and the considerable correspondence with Thomas Jefferson.[6] In order to be elected to the House of Representatives, Madison had to respond to the concerns of his constituency about the absence of a bill of rights. In addition, he was strongly influenced by Jefferson's claim in December of 1787 that, "A bill of rights is what the people are entitled to against every government on earth, general or particular; and what no just government should refuse, or rest on inference" (see Schwartz 1971, 706). Jefferson was dismayed that the new Constitution did not contain a bill of rights. By October of 1788, Madison admitted to Jefferson that he had found reason to concede that, while less essential than in other forms of government, a bill of rights might be a prudent precaution: "The political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment counteract the impulses of interest and passion" (see Schwartz 1971, 617). Thus, Madison justified the submission of a bill of rights to Congress on "declaratory grounds." Once these rights are declared and venerated by the people, as political philosopher Martin Diamond (1986, 107) explains, they "serve as an

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ethical admonition to the people, teaching them to subdue dangerous impulses of passion and interest." Of course, the value of declaration followed by veneration is lost if we are not well educated about the Bill of Rights and its contemporary implications for society.

[3] *The Bill of Rights is an anti-majoritarian document.* The great constitutional rights contained within the Bill of Rights are protections against majority pressures and majority power. Too often we forget that the Bill of Rights is part of the constitutional framework which protects us from the tyranny of the majority when we are weak, helpless, or just outnumbered. The Bill of Rights is an attempt to curb what Jefferson called "elective despotism"—the potential for tyrannical and perverse policies emerging from the elected branches of government. Jefferson disapproved "the want of a bill of rights, to guard against the legislative as well as the executive branches of the government" in the Constitution.[7] Likewise, when Madison introduced the amendments to the First Congress he noted the fear of "abuse of the executive [and] . . . the legislative power," and stressed that the purpose was to "control the majority from those acts [against the minority] to which they might otherwise be inclined."[8] As Justice Robert Jackson observed some 150 years later: "The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts."[9] As individual liberty has been threatened in this century by the growth of the American state and the rise of presidentialism, the Bill of Rights has emerged as one of the principal defenses a citizen has against these assaults.

[4] *The doctrine of "selective incorporation" has only recently applied the Bill of Rights to state and local authorities.* Once the Bill of Rights was ratified in 1791, the Congress was forbidden to abridge free speech, press, religion, and so forth. However, state legislatures *could* abridge them (unless prohibited by their state constitutions)—and they did! The individual was entitled to a fair, speedy, public jury trial, to confront accusers, and couldn't be forced to incriminate herself *if* the case was in a federal court. If the case was in a state or municipal court—and most were—the individual had no such protections. Not until the Supreme Court utilized the "due process" clause of the 14th Amendment (passed in the aftermath of the Civil War in 1868)—first in the 1930s and then again in the 1960s—were certain rights applied to state and local authorities.

This judicial doctrine is called "selective incorporation"—"incorporation" because certain rights are held to be incorporated within the due process clause of the 14th Amendment and, therefore, applicable to the states; and "selective" because the court retains the discretion of deciding which rights are in and which are not. Under this doctrine, for example, First Amendment protections of speech, press, and assembly were incorporated in 1927, 1931, and 1937 respectively; Fourth Amendment rights against illegal searches and seizures in 1949; Fifth Amendment rights against self-incrimination in 1964 and against double jeopardy in 1969; Sixth Amendment rights to counsel in 1963 and to a speedy trial in 1967; and Eighth Amendment rights to be free of cruel and unusual punishments in 1962 (see Tribe 1978, 567-569).

This doctrine was a primary target of former Attorney General Edwin Meese. According to Meese, "The Bill of Rights was designed to apply only to the national government. No where else has the principle of federalism been dealt so politically violent and constitutionally suspect a blow as by the theory of incorporation."[10] Presumably, the Attorney General prefers that the freedoms guaranteed to us by the Bill of Rights as citizens of the United States should not apply to us as residents of indi states. Jefferson believed in the universal necessity of a rights to guard against the potential excesses of governmen sumably, Mr. Meese would have a difficult time justifyi assault on incorporation to Mr. Jefferson.

[5] *The Bill of Rights does not contain all of the amend originally proposed by Madison.* Madison proposed a total of teen constitutional amendments to the House of Repre tives. Of these, twelve were approved by the House and S and ten were eventually ratified by the states. The two a ments approved by Congress but not ratified included an a ment to establish the ratio of representatives to populati the House; and one requiring that no law changing the com tion of Senators and Representatives could take effect u election of Representatives had intervened. This amen would have made it impossible for Congress to give itself a crease *without* facing the electorate first—as almost occ earlier this year. Of the remaining five amendments not app by Congress one stands out as significant. Madison propose "No State shall infringe the equal rights of conscience, n freedom of speech, or of the press, nor of the right of trial in criminal cases" (see Meyers 1973, 217). This would applied the Bill of Rights to state authorities. The many advo of states' rights present in the First Congress easily defeate amendment in the Senate. As indicated above, the nation have to wait until the mid-20th century for the Bill of Rights extended to state and local authorities.

[6] *The Bill of Rights touches daily life in America.* The Rights is not just about court cases, landmark decisions, or j doctrines. It fundamentally influences the quality of public a vate life in America. Under its protection, we are able to c elected officials and non-elected bureaucrats without retrib or punishment. We do not worry about unexpected intrusi invasions of public authority in our private lives. We spea write freely and, therefore, are at liberty to think freely a We are comforted by the many freedoms it provides and same time are made complacent by their normality and cert Conversely, all too frequently we are angered by the use Bill of Rights to protect those in society who appear undes of its benefits. This is a quintessential dilemma. However, greater threat to the Bill of Rights and the nation awaits us fail to know and recognize the rights which it guarantees an significance for life in America. Without declaration and ack edgement, there can be no veneration or enforcement. eventual evisceration of these individual liberties will be the

[7] *There are notable rights missing from the Bill of Rights.* are probably a great many rights which citizens assume or i are contained in the Bill of Rights which are just not there example, the right to housing, public welfare, or bankrupt nowhere guaranteed in the Constitution. Freedom from h or impoverishment are not guaranteed by the Bill of Rights. the right of privacy is nowhere mentioned in the Consti although the Court has recognized that a right of pe privacy, or at least a guarantee of certain zones of privacy, i stitutionally protected (however troublesome the source protection remains) (see Tribe 1978, 886-990). Most surpri of all, there is no constitutional right to education. This is a irony since education is the one capacity necessary fo enforcement of the Bill of Rights and essential to democrati ernance. "I know of no safe depository of the ultimate pow the society but the people themselves," said Thomas Jef (1820), "and if we think them not enlightened enough to ex their control with a wholesome discretion, the remedy is n take it from them, but to inform their discretion by educ This is the true corrective of abuses of constitutional pow As we battle for the soul of the Bill of Rights, this correctiv great demand—but is one which the document itself c provide.

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The Bill of Rights is not self-enforcing, nor as history has shown, can we always depend on the national government for its enforcement. Rather, enforcement depends on the vigilance and education of all Americans. As the renowned jurist Learned Hand (1952, 190) noted: "Liberty lives in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it." The "spirit of liberty" which emanates from the Bill of Rights needs to be kept alive by each new generation of Americans. It is a spirit which can only be effectively nurtured by education, self-reflection, appreciation, and toleration. The Bill of Rights is more than a legacy to be preserved, honored, or celebrated; it is a vision of respect, tolerance, and humanity to be experienced and embraced in the daily web of life.

Notes

1. The story of the Bill of Rights is told with engagement and passion by Robert Alan Rutland (1955). For important source material also consider Schwartz 1971, and Schwartz 1977.
2. For a provocative discussion of the incorporation doctrine, see Barber 1984.
3. These arguments are made most forcefully by Hamilton in *Federalist, #84*. However, Madison defended the absence of a bill of rights in the Constitution to Thomas Jefferson on similar grounds in his letter of October 17, 1788 (see Meyers 1973, 203-209). In the twentieth century arguments have also been advanced that it is really the Constitution and the separation of powers created by it which protect our liberties. Roscoe Pound (1957, 91-92) advanced this argument in the mid-1950s. In a recent series of talks on the bicentennial of the Constitution, a similar position has been taken by Associate Justice Antonin Scalia.
4. Quoted in Black 1988, 75.
5. See Storing 1981, 40. Also consider Mr. Mason's "Objections to the Constitution," in Schwartz 1971, 449-459. However, despite the importance of this issue for the Anti-Federalist cause, not all Anti-Federalists were persuaded that a bill of rights was a necessity. Consider the writings of the Federal Farmer (attributed to James Wilson) contained in Storing 1985, 79-86.
6. This correspondence is located conveniently in Schwartz 1971, 592-623.
7. Contained in a letter to Francis Hopkinson written from Paris on March 13, 1789. See Schwartz 1971, 619.
8. Madison's speech to the House of Representatives introducing the first amendments to the Constitution occurred on June 8, 1789. For the full text of this address see Meyers 1973, 210-228.
9. Quoted in Schwartz 1985, 610.
10. Quoted in *The Progressive* 1985, 10.
11. Contained in a letter to William C. Jarvis. See *The Writings of Thomas Jefferson*, edited by Paul Ford.

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